

# Horsley Witten Group

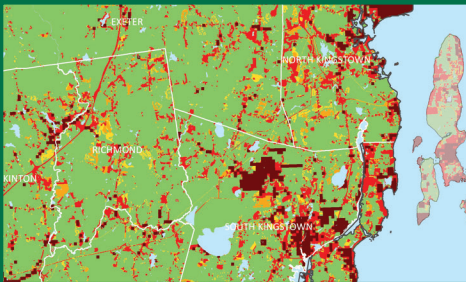
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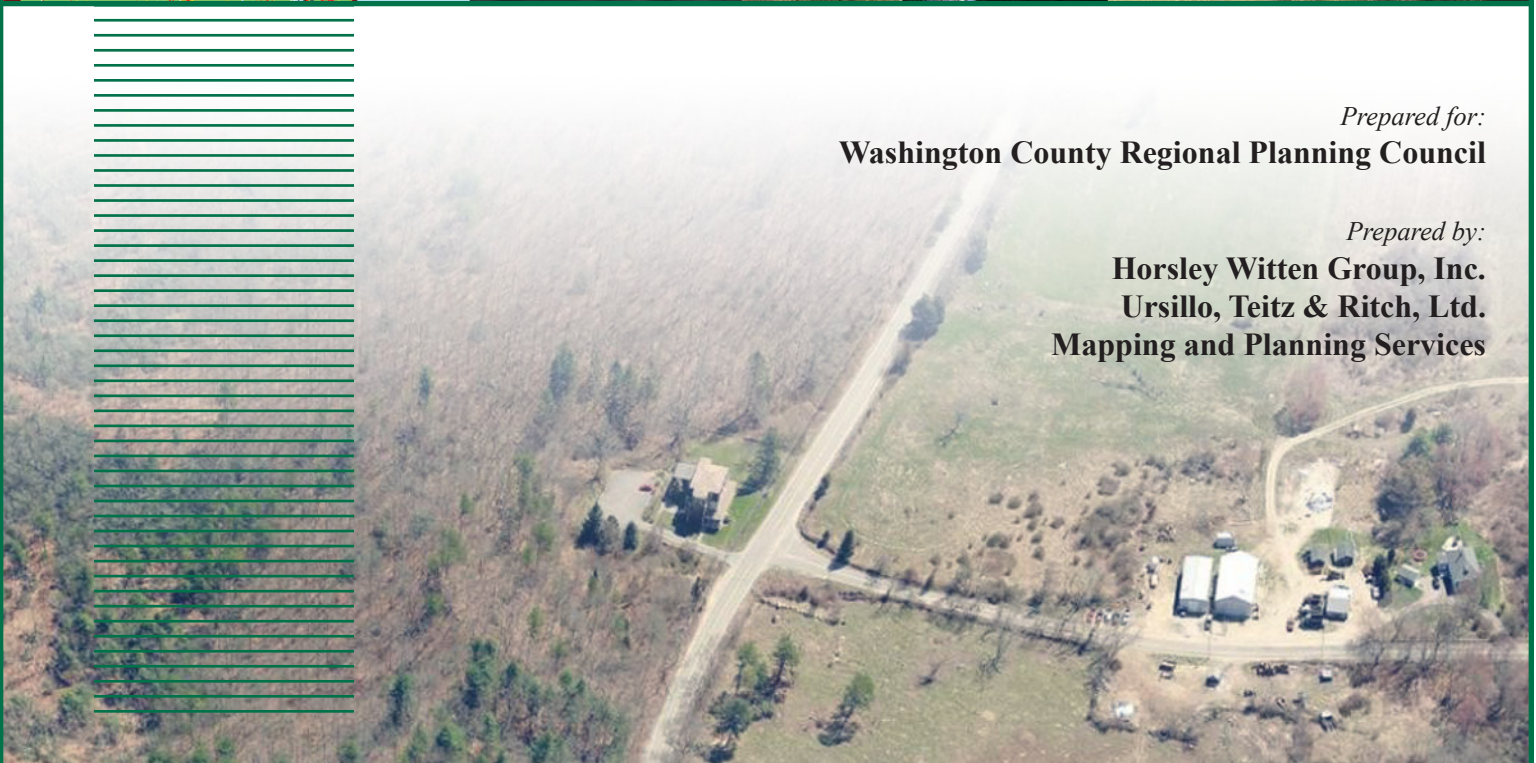
## Washington County Transfer of Development Rights Study: Final Report

October 9, 2012



*Prepared for:*  
**Washington County Regional Planning Council**

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## **I. EXECUTIVE SUMMARY**

The Washington County Regional Planning Council (WCRPC) received a Planning Challenge Grant from the Rhode Island Statewide Planning Program to study Transfer of Development Rights (TDR) in Washington County and in Rhode Island as a whole. To assist with the development of the study, WCRPC hired the Horsley Witten Group (HW), Ursillo, Teitz & Ritch, and Mapping and Planning Services. The project included the following elements<sup>1</sup>:

- Research of existing TDR programs as well as programs that focus exclusively on either preserving sensitive lands or growing in designated centers;
- “TDR 101” presentations to five Washington County municipalities to introduce the basic elements of TDR and raise awareness;
- Interviews with municipal planners in the greater Providence “ring” communities to discuss how they are looking to grow, what an effective state-level growth center program would include, and whether inter-municipal TDR is feasible; and
- A review of Rhode Island General Law related to TDR.

Findings of the report include:

- TDR programs across the country have continued to evolve and include innovative components such as “fee-in-lieu” of TDR;
- Growth center models are abundant and include valuable examples in Massachusetts, Connecticut and Vermont;
- Preservation models are valuable to TDR in that some of the programs used to raise money might help with the seeding of a TDR Bank or similar vehicle;
- Municipal planners in Rhode Island have many strong recommendations for tools and policies associated with a state “growth center” program. These are listed in the body of the report;
- Inter-municipal TDR is not likely to be a widely applied tool within the current economic climate; and
- Rhode Island enabling legislation for TDR should be revised and draft legislation is included in the report.

## **II. INTRODUCTION**

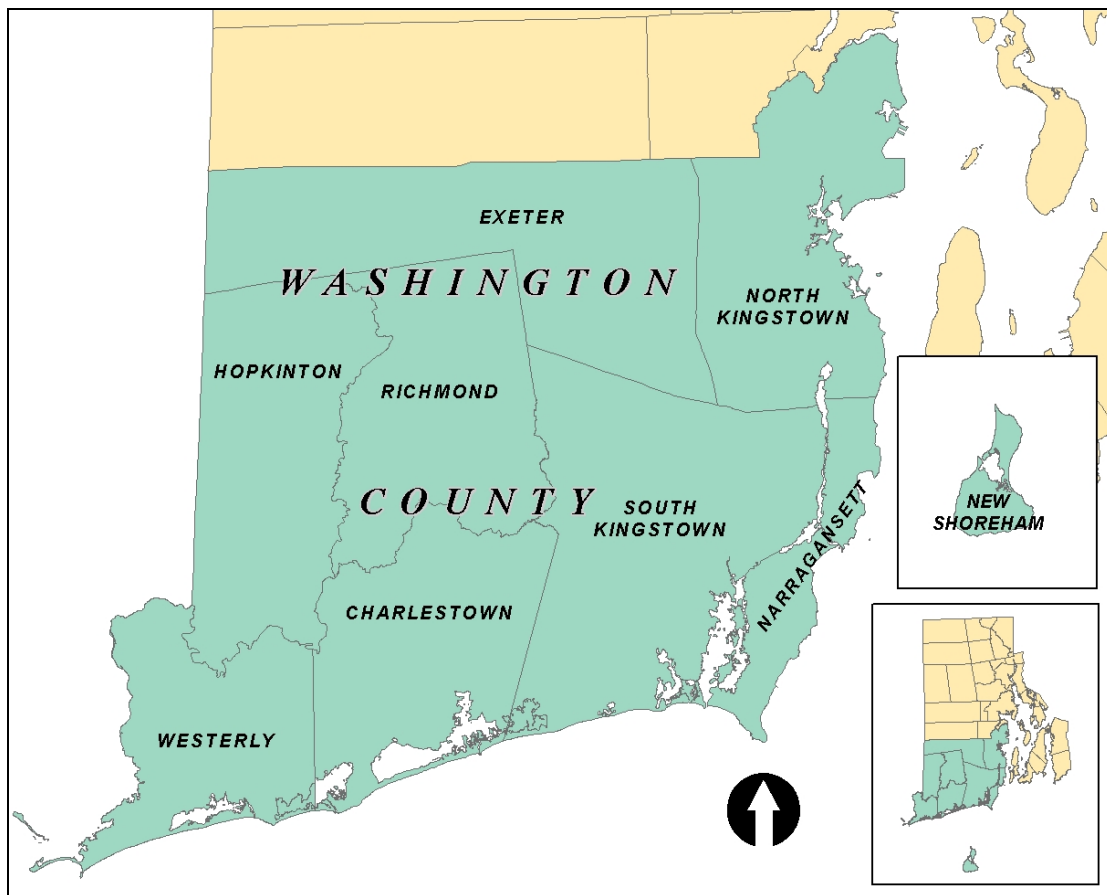
### **A. Washington County Regional Planning Council**

The Washington County Regional Planning Council (WCRPC) received a Planning Challenge Grant from the Rhode Island Statewide Planning Program to study the benefits and challenges of implementing a local Transfer of Development Rights (TDR) program

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<sup>1</sup> Note that while an understanding of market conditions is recommended for implementing TDR, examinations of local or regional market conditions were not included in this study. Resources were instead focused on the policy and regulatory elements associated with TDR.

in Washington County as well as the feasibility of establishing an inter-municipal program in the County and/or the State of Rhode Island. The WCRPC was founded in 1992 with the intent of employing a coordinated approach to more effectively address rapid growth and sprawl in Washington County. The WCRPC works specifically with municipal governments in a partnership to collectively address regional challenges. It is comprised of one elected town council member from each of the nine towns within the county (Figure 1) and serves as a unique forum for inter-municipal communication, coordination and cost sharing. The WCRPC's overall goal is to integrate local economic development with preservation of unique and valuable natural and cultural resources, such that the quality of life for Washington County residents is maintained for present and future generations.



**Figure 1. Map of Washington County**  
(Source: RIGIS)

The WCRPC envisions Washington County as a region defined by its rural character, with vibrant village centers connected by scenic and rapid transportation systems, a strong economy, permanently preserved natural areas and farmland, scenic coastline, clean and plentiful water, affordable housing and protected cultural resources. TDR is one of many tools that towns within Washington County can use to achieve this vision.

## **B. TDR Study Approach**

The WCRPC contracted with the Horsley Witten Group, Inc. (HW) to complete this TDR study in 2011. The goals of this study include: 1) To expand local knowledge of TDR among the Washington County municipalities, including residents, elected officials, and local board and commission members; 2) To review TDR, preservation, or growth programs across the country to identify patterns, successes and failures that may be useful to Rhode Island; and 3) To identify challenges and opportunities that apply generally to TDR implementation as well as those that are specific to Rhode Island.

To meet these goals, the study included research of TDR models across the country and assessing their applicability to Washington County and the State as a whole. Preservation and growth models were also investigated to see if there were notable examples of each that could be combined to customize a TDR program for Washington County communities. These programs were compared to local and state policies and regulations to determine compatibility or potential obstacles to implementation. As part of this process, the WCRPC and HW developed a so-called “TDR 101” presentation, which was presented at Town Council and Planning Board meetings to explain concepts, benefits, and challenges to putting a TDR program into practice.

Another component of the TDR study includes the concept of an inter-municipal TDR program. To gain insight into the opportunities and challenges associated with this type of program, the WCRPC and HW met with municipal leaders in the urban and suburban ring associated with the Providence metropolitan region to discuss obstacles to receiving development rights from other more rural communities. To help frame the idea of inter-municipal TDR, WCRPC and HW first discussed the concept of “growth centers.” In the national research associated with the study, the concept of a growth center or something similar was used in other states as a means to focus and promote growth in specific areas, some in association with a TDR program, some not. This approach explored the idea of a growth incentive program that might have enough incentives to entice municipalities to accept development rights from outside their boundaries.

## **C. Growth Trends in Washington County**

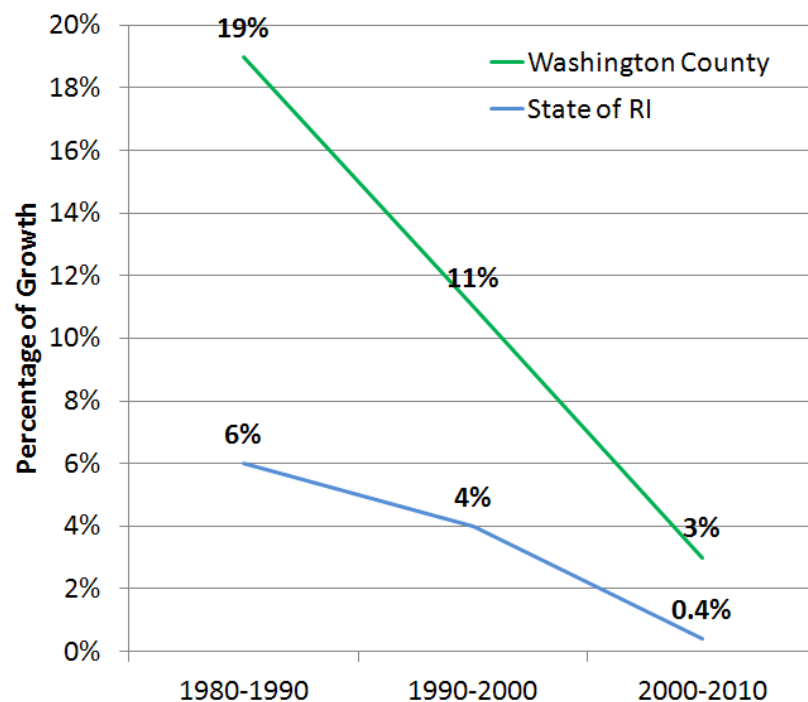
### *Population*

Even in a decade where the last several years were impacted by housing and credit market crashes and the resulting economic recession, the 2010 US Census reports that Washington County continues to grow. Overall, the County grew by nearly three percent, compared to less than one percent statewide. Exeter, Richmond, and South Kingstown show the largest population increases as shown in Table 1. Looking at county-wide growth, Figure 2 shows that although Washington County has followed the state-wide trend of declining population growth since its peak in 1980, it still maintains a higher growth rate than the rest of the state.

**Table 1. Population Changes in Washington County and State of Rhode Island (1990-2010)**

Town	1990	2000	2010	Change 2000-2010
Charlestown	6,478	7,859	7,827	-0.40 percent
Exeter	<b>5,461</b>	<b>6,045</b>	<b>6,425</b>	<b>6.30 percent</b>
Hopkinton	6,873	7,836	8,188	4.50 percent
Narragansett	14,985	16,361	15,868	-3.00 percent
New Shoreham	836	1,010	1,051	4.10 percent
North Kingstown	23,786	26,326	26,486	0.60 percent
Richmond	<b>5,351</b>	<b>7,222</b>	<b>7,708</b>	<b>6.70 percent</b>
South Kingstown	<b>24,631</b>	<b>27,921</b>	<b>30,639</b>	<b>9.70 percent</b>
Westerly	21,605	22,966	22,787	-0.8 percent
Washington County	110,006	123,546	126,979	2.8 percent
Rhode Island	1,003,464	1,048,319	1,052,567	0.40 percent

Source: US Census, 1990, 2000, 2010



**Figure 2. Washington County and State of Rhode Island Population Growth Trends (1980-2010)**  
(Source: US Census 1980, 1990, 2000, and 2010)

### *Land Development*

The consumption of land for development over the past several decades has not been proportionate to population growth. According to *Land Use 2025*, between 1970 and 1995, the amount of undeveloped area in the state was reduced by 43 percent. While it took over 300 years to develop the first 20 percent of Rhode Island's land, almost the

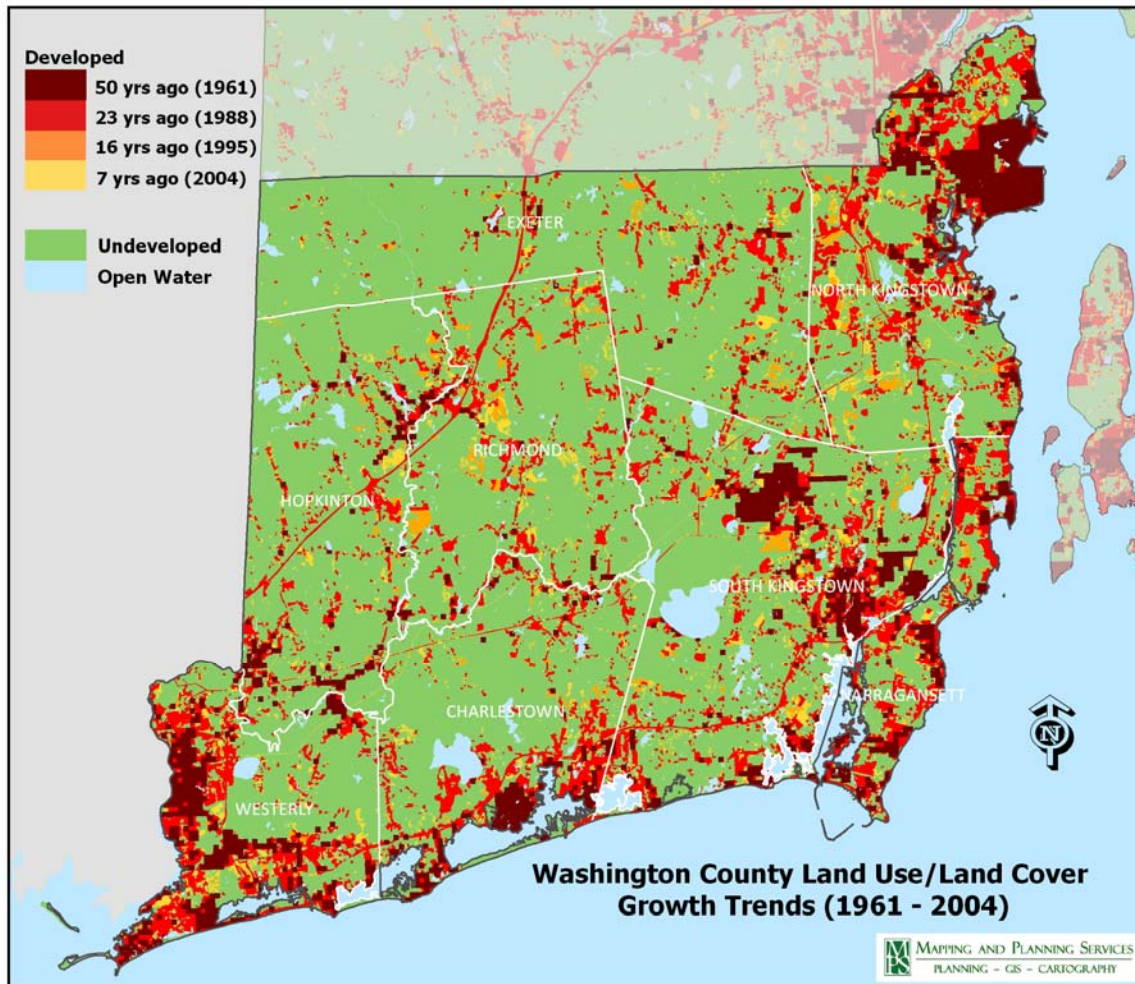


same amount of development occurred within the past 25 years. *Land Use 2025* further contends that while developed land increased by 43 percent, the population only increased by five percent.

Despite slow population growth, the number of households in Rhode Island increased, primarily the result of shrinking household size. This fueled an increase in demand for residences and housing construction booms during part of the 1980s, 1990s, and then again in early part of the 2000s. Since 1970, *Land Use 2025* reports that residential land uses increased by 55 percent.

From 1995 to 2005, these land-consumption trends continued in Rhode Island, where 30 percent of the land identified as “undeveloped” was built upon. During this period there was an emergence of new development trends that favored redevelopment and investment in the urban core. Trends focused on rehabilitating and reusing former commercial and industrial structures for mixed-use projects, much of which was supported by effective tax incentives and programs offered the State. These incentives and programs are no longer available and the expiration of these programs caused several projects in urban core areas to stall.

Figure 3 shows land development trends in Washington County over the past 50 years. (Additional mapping showing the sequence of land development in Washington County is found in Appendix A.) The progression of scattered, sprawl-like development is evident; however, large areas of land remain undeveloped and some are permanently protected as state and local parks as well as land holdings of non-governmental conservation organizations and conservation easements on private properties. These government and conservation holdings will be protected in perpetuity.



**Figure 3. Washington County Land Use/Land Cover Growth Trends (1961-2004)**  
(Source: RIGIS)

In response to the impact of sprawl, several Washington County communities have adopted smart growth techniques to encourage development that protects natural and cultural resources; promotes more mobility opportunities through transit, walking and biking; supports the local economy; increases housing options; and offers a high quality of life for residents. Strategies vary greatly by town and local conditions. Some include transit-oriented development, conservation design, zoning that allows compact, mixed use development, and projects that reinvest in town center infrastructure. The use of TDR has also been considered, and even implemented in Washington County (North Kingstown and Exeter) as a way to respond to the loss of forests, farmland, and open space.

### III. TRANSFER OF DEVELOPMENT RIGHTS

#### A. TDR Basics

Definitions, mechanics, procedures, and elements of TDR have been exhaustively researched (Pruetz, 2003) and there are many different types of programs across the country. GrowSmart RI provided the most recent research piece in this state with their 2007 white paper “*Transfer of Development Rights: A Study of Its Use in Other States and the Potential for Use in Rhode Island*” (Sheehan, 2007). In this paper, TDR is defined as follows:

“TDR is a voluntary and market-based land use tool used by communities to direct development away from rural, open space, and farm lands and towards areas most appropriate for growth. **The goal of the program is to help to implement community land-use goals by having an exchange take place: the permanent preservation of lands that a community wants to save is exchanged for extra development in areas a community has designated for growth.**”

This paper provides an excellent summary of the key elements of TDR programs as well as guidance on how to navigate the complex path to implementation at the local level. Rather than restating all of these fundamental aspects of TDR which are well-organized in the GrowSmart publication, HW has included a copy of the white paper as Appendix B. Readers not familiar with the basic components of TDR are encouraged to read this appendix before delving further into this report.

#### B. The “TDR 101” Presentation Series

The concept of a “TDR 101” presentation series was conceived by WCRPC because they recognized the necessity of educating local decision makers on an introductory level. The goal of this presentation series, which occurred in five of the nine Washington County municipalities, was to present TDR as a land use tool to curb sprawl and protect important landscapes that define Washington County, such as farmland, forests, and fields. Presentations to local town councils and invited boards and commissions answered the questions: Why are we talking about TDR?; What does growth look like?; How does TDR work?; and How can it work in my community?

#### IV. TDR IN WASHINGTON COUNTY AND RHODE ISLAND

North Kingstown and Exeter are the only communities in the State that have implemented a broadly focused TDR program<sup>2</sup>. They have also participated in an inter-municipal TDR agreement between each other. The remaining Washington County communities identify TDR in the comprehensive plans as a concept that requires further consideration and assessing its feasibility is an action item. The following section provides an overview of what local comprehensive plans are saying about TDR, local preservation efforts, and identifying growth centers.

**Table 2. References to growth, preservation, and TDR in local comprehensive plan**

Town	Growth	Preservation	TDR
<b>Charlestown</b>	Identifies growth centers at Carolina, Cross Mills, and Shannock.	<ul style="list-style-type: none"> <li>• Open space dedication requirement in local subdivision regulations</li> <li>• Consider a farmland/ open space overlay district</li> <li>• Implement conservation development standards</li> </ul>	Evaluate a local TDR program to protect natural resources and encourage development in growth centers
<b>Exeter</b>	Vision for Exeter to identify suitable location(s) for village center(s)	<ul style="list-style-type: none"> <li>• Property acquisition and conservation easements</li> </ul>	<ul style="list-style-type: none"> <li>• Implemented an inter-municipal program with North Kingstown</li> <li>• Developing a local program in conjunction with Vision for Exeter</li> </ul>
<b>Hopkinton</b>	Identifies growth centers at I-95 Exit 1 and an evaluation of I-95 Exit 2	<ul style="list-style-type: none"> <li>• Farm Viability Ordinance</li> <li>• Land acquisitions and conservation easements</li> </ul>	Evaluate a local TDR program to protect farmland, forest, and open space
<b>Narragansett</b>	Redevelopment of the Pier	Creation of greenbelts through property acquisition	Investigate strategies to obtain, or allow the transfer of, development rights to protect natural and historic resources, develop a greenbelt, and incentivize re-platting undersized lots
<b>New Shoreham (Block Island)</b>	Downtown/village zone supports compact mixed use development	<ul style="list-style-type: none"> <li>• Property acquisition and conservation easements</li> <li>• Cluster subdivision regulations</li> </ul>	Use creative regulation, including the transfer of development rights, over wider distances

<sup>2</sup> The City of Providence and the Town of Narragansett have also allowed for very different applications of TDR. Providence allows for the transfer of building stories from one property to another. Narragansett focused on a specific housing development project. Neither program has been used.

<b>Town</b>	<b>Growth</b>	<b>Preservation</b>	<b>TDR</b>
<b>North Kingstown</b>	<ul style="list-style-type: none"> <li>• Post Road Growth Centers</li> <li>• Consider Village District Ordinance</li> </ul>	<ul style="list-style-type: none"> <li>• Property acquisition and conservation easements</li> <li>• Groundwater protection overlay</li> <li>• Conservation development standards</li> </ul>	<ul style="list-style-type: none"> <li>• Implemented a local TDR program</li> <li>• Implemented an inter-municipal TDR program with Exeter</li> </ul>
<b>Richmond</b>	Wyoming, Shannock, I-95 Exit 3, and evaluate intersection of Routes 112 and 138	<ul style="list-style-type: none"> <li>• Property acquisition and conservation easements</li> <li>• Conservation design</li> <li>• Agriculture overlay</li> <li>• Aquifer protection overlay</li> </ul>	Evaluate a local TDR program to protect farmland, forest, and open space
<b>South Kingstown</b>	<ul style="list-style-type: none"> <li>• Growth management plan</li> <li>• Village plans for Peace Dale and Wakefield</li> </ul>	<ul style="list-style-type: none"> <li>• Property acquisition and conservation easements</li> <li>• Consider farmland/open space overlay district</li> <li>• Conservation design standards</li> </ul>	Evaluate a local TDR program to protect farmland, forest, and open space
<b>Westerly</b>	<ul style="list-style-type: none"> <li>• Downtown</li> <li>• Neighborhood revitalization efforts in North End, Bradford, and White Rock</li> </ul>	<ul style="list-style-type: none"> <li>• Property acquisition and conservation easements</li> <li>• Adopt conservation design development standards</li> </ul>	TDR is not referenced

## V. NATIONAL MODELS

As previously discussed, the purpose of a TDR program is to take development that would have occurred in one area, such as open space, natural resources, and important landscapes that require protection, and move it to another area that can accommodate the additional growth. HW examined TDR programs nationally to identify any essential elements or new practices that would be helpful to implementation in Rhode Island. Also, because TDR has two parts: preservation and growth, we also looked programs that looked at these goals individually. Preservation and growth incentive models were looked at in detail to see if any components could be adapted to a broader TDR approach. The intent was to bring the best and most appropriate strategies for Washington County together to create a regional comprehensive TDR program. Appendix D contains a summary of all programs discussed, including website links and references to state enabling legislation, zoning ordinances, and other policies and standards.

## A. TDR Models

### 1. Montgomery County, Maryland



**Figure 4. Farm in Montgomery County, MD**  
(Source: University of Maryland Extension)

The Agricultural Division of the Montgomery County Department of Economic Development administers several agriculture preservation programs, including a TDR program. According to a status report published by Research and Technology Center in January 2008, Montgomery County began taking steps to preserve agricultural land and open space in 1980. The Agricultural Reserve was created in conjunction with a TDR program. The Agricultural Reserve lands are predominantly zoned as the

Rural Density Transfer (RDT) zone. Under the RDT zone, the base density is one dwelling unit per 25 acres and with the TDR program, property owners are granted one development right per five acres of land within the Reserve. Development rights can be sold to landowners or developers to develop at higher densities in designated receiving areas.

According to the status report, from 1980 to 2008, over 9,000 TDRs have been “severed,” that is, development rights were relinquished from the property and made available for purchase. This translates into more than 64,000 acres held by TDR program participants and permanently preserved at one dwelling unit per 25 acres. Further, of those severed TDRs, 211 are buildable TDRs. According to the status report, this represents more 5,000 acres permanently preserved from future development at any density.

As for current conditions, the Agricultural Division reports that there is an insufficient number of receiving areas for the TDRs. A 20% density increase for low and moderate income units and arduous development standards make TDRs less attractive.

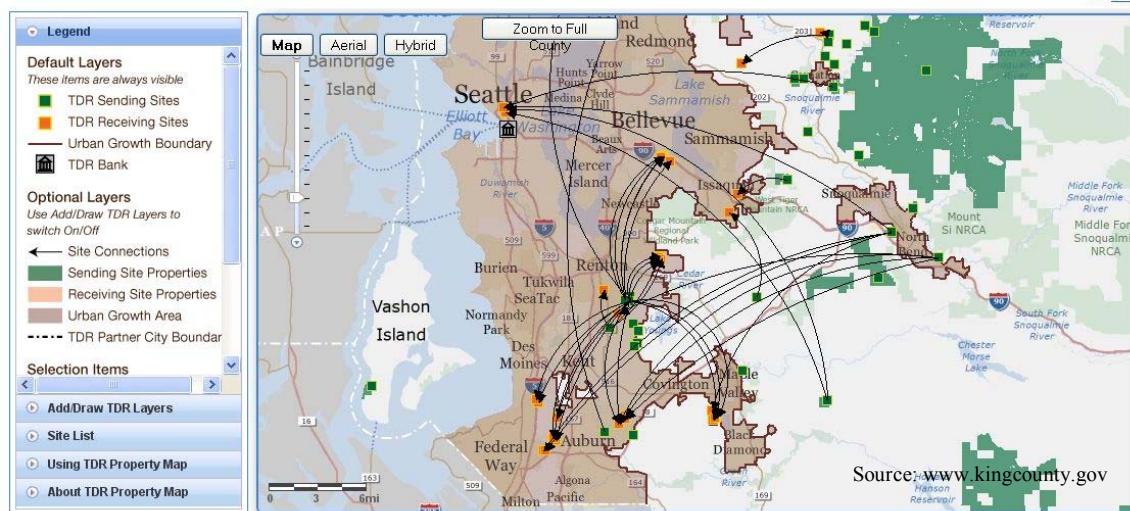
### 2. King County, Washington

The State of Washington 1990 Growth Management Act mandated the creation of county management councils and for these councils to develop countywide growth management policies. In 1991, to meet this mandate, the King County Growth Management Policy Council was established and subsequently adopted Countywide Planning Policies for King County in 1992. These policies were



amended in 1994 to establish an urban growth boundary, urban separator lands, rural area districts, agricultural production districts, and forestry production districts, among others, which were adopted in the County's 1994 Comprehensive Plan.

The King County TDR program (Figure 5) is one component of the Countywide Planning Policies and its primary purpose is to protect rural areas and "urban separator" lands from suburban sprawl. A large majority of rural areas are outside of incorporated cities and towns, and urban separator lands are low-density areas within the county's established urban growth boundary. County funds are used to purchase development rights in the rural, agricultural, and forest production districts, which are then banked for later sale and use in certified urban receiving areas.



**Figure 5. TDR Program Property Online Map Viewer, King County, WA**  
(Source: [www.kingcounty.gov](http://www.kingcounty.gov))

The TDR Exchange is a website that is primarily used by TDR certificate holders and potential buyers and lists TDRs for sale. Information on TDRs for sale include the number of TDRs available, the type of TDR ("rural" TDRs generally allow two additional units and "urban" TDRs generally allow one additional unit), and its price (some listed as "negotiable"). Those seeking TDRs can also post their interest, listing how many are needed, and the desired price.

An inter-local agreement must be in place between King County and a municipality before development rights may be transferred to a development project. The agreements may offer the municipalities some compensation or amenity funds for infrastructure improvements, acquisition, design or construction of public facilities, transit, and streetscape improvements. In the last several years, however, cuts in funding for municipality compensation, a "full" TDR

Bank, and tensions between the County and municipalities have all led to a less robust TDR market.

### 3. Boulder County, Colorado


The Boulder County TDR program was developed to promote the protection of agriculture, rural open space and character, scenic vistas, natural features, and environmental resources. The County has designated specific areas that will be sending development rights, which are depicted on the Boulder County TDR Sending Sites Map and the Niwot Sending and Receiving Area Map. Areas designated through inter-governmental agreements with municipalities in Boulder County area also eligible for sending. The TDR program does not have a “bank” and developers interested in knowing if development rights are available must contact a realtor or the County’s planning department.

The Boulder TDR program has several success stories. First, the use of inter-governmental agreements has increased the credibility of TDRs with developers and the public. Also, the eligibility criteria for sending areas have made TDR a preferred option for rural development. There continues to be a market for TDR receiving site development and receiving site criteria allow developers significant latitude in site design and density. Finally, the public has become more comfortable with TDR as a growth management and preservation tool leading to a reduction in opposition to proposals.

Boulder County also has a Transferable Development Credit (TDC) program (Figure 6), which requires homeowners in unincorporated Boulder County who wish to build residences with floor areas greater than 6,000 square feet purchase TDC Certificates. Homeowners who own vacant parcels or smaller homes in unincorporated Boulder County have the opportunity to obtain TDC Certificates which can be sold in the TDC Marketplace. The TDC Marketplace is on the County’s website and lists all TDCs available, their value, and property owner contact information. If a property owner wants to obtain TDC Certificates for their property, they are required to keep their parcel vacant or restrict the floor area of a residence to no more than 2,000 square feet.



Boulder County > Live > Property > Transferable Development Credit Marketplace



## TRANSFERABLE DEVELOPMENT CREDIT MARKETPLACE

### The TDC Marketplace

The TDC Marketplace is the place for buyers and sellers to check the availability of Transferable Development Credits and to establish communication between buyers and sellers. There is also a TDC Sales History for you to watch the market trends of TDCs.

Please check out our [Frequently Asked Questions](#) for more information about becoming a seller or a buyer of TDCs.

### TDCs for Sale

Date Listed	Seller Name	TDCs Available	Price per TDC	Proposed Sale Date	Phone	Email
5/5/2009	Peter Dillon	2	\$9,500.00		303-554-9369	<a href="#">Email seller</a>
5/6/2009	Nicole Martin and Brent Griffith	1	\$9,500.00	Available as needed	303-619-9509	<a href="#">Email seller</a>
1/13/2010	Fred Berkelhammer	1	\$9,100.00	Available as needed	303-665-4861	<a href="#">Email seller</a>

Figure 6. TDC Market Place Screenshot, Boulder County, CO  
(<http://www.bouldercounty.org/live/property/pages/tdcmarketplace.aspx>)

#### 4. Tahoe Regional Planning Agency, California and Nevada

The Tahoe Regional Planning Agency (TRPA) adopted the Tahoe Regional Plan in 1986, which regulates land use, density, growth rates, excavation, and land coverage. Limits to land coverage are an essential part of the plan to protect water quality and control stormwater runoff. Land coverage regulation can limit both the development of vacant land and redevelopment. In 1987, TRPA adopted four transfer mechanisms designed to preserve the Lake Tahoe Basin: (1) land coverage transfer program, (2) residential allocations, (3) TDRs from vacant land, and (4) TDRs from existing development. Land area coverage transfers are handled through private transactions and residential allocations and TDRs are managed by local governments. A single project for development is required to obtain land coverage, allocation, and TDRs to initiate a development proposal.

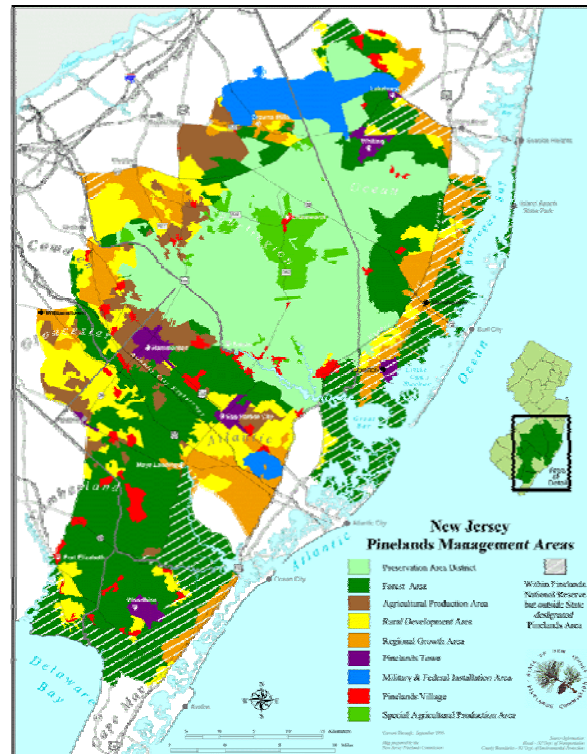
Layers of approval by local governments add to the process and may discourage development; however, the demand to build in the Lake Tahoe area remains high and requires no municipal incentive to attract developers.

The California Tahoe Conservancy (CTC) was designated by the TRPA as the Land Bank for the California portion of the Lake Tahoe Region. The CTC is also available to process land coverage transfer applications when purchasing coverage from them. Additionally, CTC sells units of use and development rights, which must be processed through TRPA. Banking is not available for Nevada communities.

In 2011, the TRPA began the update process of Tahoe Regional Plan. One of the policies being addressed is the transfer of development rights, and encouraging property owners to use the program, particularly from outlying and sensitive areas to existing town centers.

## 5. Pinelands, New Jersey

The National Parks and Recreation Act of 1978 established the Pinelands National Reserve in New Jersey and called for preparation of a comprehensive management plan. The Pinelands is comprised of forests, swamps, and extensive high quality surface and groundwater resources, many of which create critical wildlife habitat for rare, threatened, and endangered plant and animal species. The area is vulnerable to environmental degradation and was threatened by unmanaged development pressure. The New Jersey Pinelands Protection Act of 1979 established the Pinelands Commission as the planning entity with the responsibility to oversee development proposals in the designated Pinelands area. They were also charged with developing the comprehensive management plan for the Pinelands area (Figure 7).



**Figure 7. Pinelands Management Areas, NJ**  
(Source: New Jersey Pinelands Commission)

The Pinelands Commission administers the Pinelands Development Credit (PDC) program, which began in 1981. The PDC program is a transfer of development rights (TDR) program that helps to redirect growth in the Pinelands from the preservation and agricultural districts to infrastructure-supported regional growth areas. As of January 1, 2011, since 1981, the PDC program has protected 58,600 acres of preservation areas and farmland.

PDCs can be bought and sold privately or through the Pinelands Development Credit Bank, which was chartered in 1987 and seeded with five million dollars. In 1999, the State of New Jersey began to buy and retire PDCs, removing them from the market. New rules in 1994 provide more flexibility to municipalities in their growth management effort and the development review process was streamlined.

The PDC program is voluntary and not all developers use it; therefore, there is a large surplus of PDCs. The creation and use of credits requires Commission review of development plans as well as local approval. PDCs can be bought and sold privately or through the Pinelands Development Credit Bank. The Bank's website lists sellers and buyers along with total amount of PDCs available/wanted, if specified.

#### 6. Livermore, California

In response to the City of Livermore's 2003-2025 General Plan and the North Livermore Urban Growth Boundary Initiative, the Livermore Transferable Development Credit (TDC) program was adopted by ordinance in 2004. The primary goal is the preservation of agricultural land and open space. TDCs may be sold, purchased, or otherwise transferred by any person or entity including the City and other governmental entities. The TDC program offers a density bonus to receiving area sites for the use of TDCs and dwelling units that use TDCs are given a priority allocation under the building permit cap.

The use of TDCs is an option in receiving areas but the increase in density that it allows is an incentive. To exceed baseline density in a TDC receiving zone a land owner may also opt to make a payment in lieu of purchase and retiring TDCs. The TDC fee in lieu amount is reviewed bi-annually. Fees are used for the City's acquisition of TDCs from North Livermore and to offset administration costs of the program. The City of Livermore also has a revolving fund in which the City purchases and resells TDCs.

#### 7. Warwick, New York

The Town of Warwick's TDR program is focused on preserving farmland and significant open space, and it encourages the use of existing inter-municipal agreements to transfer residential density to existing developed villages. There is no TDR bank, and the program relies on contributions to an Incentive Trust

Account in exchange for an increase in density when annexed property is developed. The account is then used to preserve open space either through the purchase of development rights or fee title.

Based on policies in the Town's Comprehensive Plan, a density transfer program was created to steer growth toward the Village of Warwick, which has the infrastructure needed to support additional development. A TDR zoning regulation followed. The sending area for TDR is the Agricultural Protection Overlay District, created to preserve large parcels of productive agricultural land.

#### 8. Sarasota County, Florida

Sarasota's first TDR program began in 1982 to prevent the development of small suburban lots. It was replaced in the 1990s by a program intended to preserve conservation land. In 2001, *Sarasota 2050* was passed and included a strong emphasis on growth protections and a residential build-out analysis. The Plan concluded that even with the full use of property within the existing and future urban service area, the County would reach residential build-out by 2016. A concern over the development of environmentally sensitive lands in the rural fringe zones led to the adoption of a revised TDR program in 2004, the Density Incentives Program (further revised in 2006).

The Density Incentive Program goals are to preserve rural character and landscape, to preserve agriculture as a viable economic activity, and to create an integrated network of open space, parkland, greenways, and trails throughout the County. The program dictates some of the tools that may be applied in sending and receiving areas in village and hamlet districts. In some cases, these areas allow TDR to increase density from one dwelling unit per five acres, to three dwelling units per acre in the same geographical area (more than a 15-fold increase). Despite this aggressive incentive package, the market demand for additional density in the village areas relative to the supply of TDR is an issue of concern. There is no TDR bank included in this program.

### **B. Preservation Models**

Preservation programs researched for this study deal primarily with land acquisition and most are not specifically linked with TDR. Conservation organizations and municipalities protect open space and important landscapes through property acquisition, easements, and acceptance of donations. Many of these strategies require funding, therefore, preservation models focus on building financial resources or developing incentives for property owners to donate land or place under permanent conservation easements. Common ways communities raise funds to protect open space are bonds, budget allocations, and applying for grants. Other strategies include sales taxes on consumers or property taxes on land owners as well as tax credits to property owners that

permanently protect open spaces on their property. They are administered at the state, county or local level.

### 1. San Juan County, Washington: Real Estate Excise Tax

San Juan County, Washington, which is comprised mostly of the San Juan Islands, established the San Juan County Land Bank Tax, also known as a real estate excise tax (REET). County voters authorized the tax in 1990 for a 12-year period and it was renewed for another 12 years in 1999 (by a nearly 73 percent majority). REET is paid by the purchaser at a rate of one percent of the selling price. Payment of the tax is due and payable immediately at the time of sale. Funds are used exclusively for preserving the natural heritage of the San Juan Islands.

The San Juan County Land Bank Tax is administered through the San Juan County Land Bank, whose primary purpose is to preserve, in perpetuity, areas in the County that have environmental, agricultural, aesthetic, cultural, scientific, historic, scenic, or low-intensity recreational value, and to protect existing and future sources of potable water (Figure 8). Other sources of funding for the Land Bank come from a conservation futures tax, private donations, grants, and interest income.



**Figure 8. Conservation and Preservation Areas on the San Juan Islands, WA**  
(Source: [www.sjclandbank.org](http://www.sjclandbank.org))

## 2. Santa Clarita, California: Special Assessment District

The voters in the City of Santa Clarita, California approved the Open Space and Parkland Preservation District in 2007 as a mechanism to finance the acquisition and preservation of undeveloped land in and around the city. Property owners within the Preservation District are charged a special assessment rate. The intent of the Preservation District is to increase funding to the City's existing Open Space, Park and Parkland Program in order to accelerate the acquisition of land. The Open Space Acquisition Plan outlines criteria to evaluate which properties are "high priority" and whether a proposed property meets the program's goals and objectives. Overall, acquired land must be within the benefit area of the Preservation District (a three-mile radius of the City's existing parks and open space lands) and at least 90 percent of the acres purchased must be preserved for natural open space, so that no more than 10 percent of the acres purchased will be used for future improved active parkland.

The assessment criteria are as follows:

- In the first year, a single family residence will pay \$25, which is the designated "Assessment Rate." Condominiums, townhomes and apartments will pay \$18.75 for each unit, and mobile home parks will pay \$12.50 per space.
- Non-residential property, such as commercial, industrial and institutional land uses, will pay \$75 per acre, and vacant parcels will pay \$18.75 per acre up to 5 acres (so not to exceed \$93.75).

The maximum Assessment Rate that can be charged will increase by \$1 each year. The actual Assessment Rate in any fiscal year must be approved by the City Council prior to the levy and may not exceed the maximum Assessment Rate without receiving property owner approval for the increase. The assessment is proposed for a 30-year period.

## 3. Old Tappan, New Jersey: Property Tax

In 1999, voters of the Borough of Old Tappan, New Jersey passed a referendum that established the Open Space Trust Fund. For a period of five years, a local property tax was charged in the amount of \$0.01 per \$100 of assessed value. Funds were designated for the purchase of open space with the intent to keep it in its natural state. If no open space was available for purchase, the funds could be used for other recreation, conservation, farmland preservation, or historic preservation purposes, as permitted by law and following a public hearing.

The Mayor and Town Council established the Open Space Advisory Committee, which makes recommendations to the Mayor and Council for use of open space funds consistent with the referendum. The Committee is responsible developing a

list of priority sites for acquisition and reviewing suggestions from all sources. Since 2000, the Borough has collected approximately \$118,000 per year and has purchased several critical properties. Because many state and county open space loan and grant programs require municipalities to contribute to the cost of acquiring open space, much of the funds collected through this program have been used as leverage for these programs.

#### 4. Douglas County, Colorado: Sales Tax

In Colorado, the Douglas County Division of Open Space and Natural Resources manages the Douglas County Open Space Program. The Program was created in 1994 with the passage of a sales and use tax. It has focused considerable effort on land acquisition, protecting 46,220 acres of open space land in the county. While Douglas County has purchased land at today's prices, much of the program's revenue stream is committed to bond payments for that land and future land acquisition will require additional funding sources.

Like Douglas County, Boulder County also uses a county-wide sales and use tax to fund acquisition of open space. Funds are managed by the Division of Real Estate of the Parks and Open Space Department. There are currently four on-going sales taxes that are a result of six voter-approved sales tax resolutions (1993-2010). They are:

1. 0.25 percent Sales Tax in effect through 2019
  - 1993: 0.25 percent Sales Tax in effect 1994-2009.
  - 1999: Extension of 0.25 percent Sales Tax in effect through 2019
2. 0.10 percent Sales Tax in effect through 2029
  - 2000: Extension of existing 0.10 percent Sales Tax recycling and composting tax for open space through 2009.
  - 2007: Extension of 0.10 percent Sales Tax through 2029.
3. 0.10 percent Sales Tax through 2024; 0.05 percent continues in perpetuity (2004)
4. 0.15 percent Sales Tax through 2030 (2010)

These funds are used to purchase property, pay off bonds, fund programs that preserve habitat, provide education and recreation programming, and create and maintain trails. It should be noted that in Boulder County open space acquisition is also supported through property tax funds that are subject to annual appropriation by the County Commission, state lottery funds (the state distributes a portion of the net proceeds to local governments and recreation districts based on population), and grants from Great Outdoors Colorado, the Land and Water



Conservation Fund, and the Federal Farmland Protection Program, when funds are available.

5. Franconia, Pennsylvania: Open Space Earned Income Tax

In the Township of Franconia, Pennsylvania (2010 population 13,064), voters approved a referendum in 2001 to impose an earned income tax (EIT) of 0.25 percent. Funds are used to purchase open space, agricultural, recreational, and historic lands. Open space objectives are outlined in the Franconia Township Open Space Plan of 2005. The 2011 budget balance for the fund is \$4.9 million. A portion of those funds are used for an annual payment of \$550,000 to repay money previously borrowed for open space acquisition.

6. State of Georgia: Conservation Tax Incentive

The State of Georgia offers a conservation tax credit to landowners as a financial incentive to donate land or place a permanent conservation easement on their property. Taxpayers can claim a credit against their state income tax of up to 25 percent of the fair market value of the donated property. The credit is limited to \$250,000 for individuals, \$500,000 per corporation, and up to \$1 million (in aggregate) for partnerships. The amount of the credit used in any one year may not exceed the amount of state income tax otherwise due. Any unused portion of the credit may be carried forward for ten succeeding years. The property must be donated to a government entity or to a qualified non-profit organization and must meet the State's conservation purposes. The Georgia Department of Natural Resources is responsible for certifying that donated property meets conservation purposes and that the property is being donated to a qualified organization. Certification required for the tax credit can only be made after the conservation donation has been completed.

**C. Growth Models**

The second half of the TDR approach is to encourage growth. Growth incentive models look to focus development in targeted areas. Communities use these programs for a variety of reasons, including building affordable housing and encouraging reinvestment and infill development in areas that have been neglected. Administered from the state level, agencies can offer communities financial incentives to accept growth for the region. Incentives include direct cash payments, priority for state technical or financial assistance. Locally, county and municipal governments direct financial incentives to developers and property owners for investment in specific areas of the community. Incentives can be fee waivers or added density.

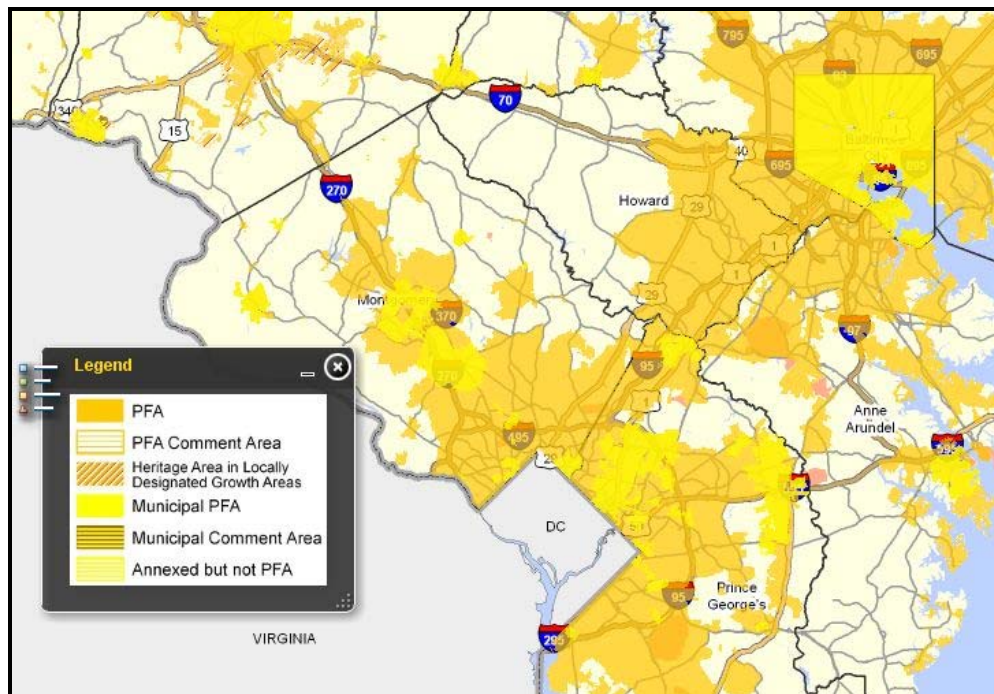


## 1. State Incentives

### *State of Maryland: Priority Funding Areas*

In 1997, the State of Maryland passed the Priority Funding Areas (PFAs) Act to direct State funding for growth-related projects to PFAs. PFAs are existing communities and places where local governments want State funding for future growth. Growth-related projects include most State programs that finance highways, sewer and water construction, economic development assistance, and State leases or construction of new State office facilities. The Act legislatively designated certain areas as PFAs: municipalities (as they existed on January 1, 1997), areas inside the Baltimore and Capital Beltways, Department of Housing and Community Development designated neighborhood revitalization areas, designated enterprise zone, heritage areas, and existing industrial land. PFAs are given priority for state funding over other areas (Figure 9).

Counties also may designate areas as PFAs if they meet guidelines for intended use, availability of plans for sewer and water systems, and permitted residential density. Areas eligible for PFA designation are existing communities and areas where industrial or other economic development is desired. In addition, counties may designate areas planned for new residential communities which will be served by water and sewer systems and meet density standards.



### *State of Connecticut: Incentive Housing Zones*

Connecticut's Office of Planning and Management (OPM) Housing for Economic Growth Program offers incentives for communities to establish Incentive Housing Zones. These zones must comply with minimum density requirements. Technical Assistance Grants for planning, adoption of regulations and design standards, review and revision are available for communities with designated zones. Zone Adoption Grants are \$2,000 to each municipality that has complied with the requirements of the program for each unit of housing to be built. Building Permit Grants are one-time building permit payments for each building permit issued for each residential housing unit in an approved Housing Incentive Development (\$2,000 for each multi-family housing unit, duplex unit or townhouse unit; \$5,000 for each single family detached unit).

### *Commonwealth of Massachusetts: Smart Growth Overlay Districts*

Massachusetts, through Department of Housing and Community Development (DHCD), allows municipalities to establish Smart Growth Overlay Districts. Chapter 40R of the Massachusetts General Law encourages cities and towns to establish new overlay zoning districts to promote housing production and, more generally, smart growth development. Overlay districts must provide a minimum allowable density of eight units per acre for single family houses, 12 units per acre for two to three family housing units, and 20 units per acre for multi-family housing units. The zoning must require that 20 percent of the housing units within the district are designated as affordable. The district may also allow mixed-use buildings. The location of these districts must be near a rapid transit, commuter rail station, or an area of concentrated development including a town center.

The municipality will receive both incentive and density bonus payments from the DHCD for all housing permitted under the overlay district. Upon approval of the district, the municipality receives a zoning incentive payment based on the number of housing units that can be built in the district. Payments range from:

- \$10,000 for up to 20 units;
- \$75,000 for 21-100 units;
- \$200,000 for 101-200 units;
- \$350,000 for 201-500 units; to
- \$600,000 for 501 or more units of housing.

Other financial incentives are bonus payments and funding preference. DHCD will issue a bonus payment of \$3,000 for each unit of new housing unit built in the district, payable once the building permit has been issued for the housing unit. When awarding discretionary funds, DHCD and the Executive Offices of

Environmental Affairs, Transportation, and Administration and Finance must give preference to municipalities with an approved smart growth zoning district.

The application process to the DHCD has three steps. A site analysis and preparation of a Developable Land Plan identifies all developable land within the proposed overlay district, considering environmental constraints, and calculates an “Existing Zoned Units Plan” which shows the maximum as-of-right residential density permitted under the existing zoning. This plan is then used by the DHCD to calculate the Existing Zoned Units, Zoning Incentive Payment and Density Bonus Payments to the municipality. The second step is preparation of a Smart Growth Residential Density Plan. This plan uses the goals and objectives of the local master plan to develop a conceptual site plan of the proposed overlay district that illustrates the district’s proposed design and density. It will calculate the as-of-right residential density permitted under the proposed overlay district. This plan will be used by the DHCD to calculate the Future Zoned Units, Incentive Units and Zoning Incentive Payments to the municipality. The final step is preparation of a 40R Smart Growth Overlay District. The Developable Land Plan and the Smart Growth Residential Density Plan are used to prepare zoning regulations for the use, density and dimensional requirements as well as plan review procedures, affordable housing requirements, and design standards for all developments within the district.

#### *State of Vermont: Growth Centers*

Vermont has a strong history of state legislation designed to address patterns of development and impacts of growth at the local level. In 1970, criteria were established addressing the impacts of growth on public investments and the costs of scattered development (Act 250). Act 250 establishes the land use review and permitting process via nine district environmental commissions throughout the state.

In 1994 the Vermont Downtown Program was created, which provides incentives for development within state-designated downtowns, villages, and new town centers. In 2006, the state enacted additional legislation to promote the concept of Growth Centers (Act 183). Act 183 lays out a formal process for state designation of locally planned growth centers and incentives for growth center investment and development.



**Figure 10. Vermont Farm**  
(Source: [www.smartgrowthvermont.org](http://www.smartgrowthvermont.org))

To be eligible as a growth center, municipalities must apply and demonstrate how they meet criteria in a growth center plan. The plan must address growth projections, growth center design and build-out, and ways of discouraging development outside of the growth center boundaries as well as include an implementation program. Applications are reviewed by the Vermont Downtown Board (expanded from the Vermont Downtown Program, which is still operational and municipalities can apply concurrently to both programs). A Growth Center Planning Manual details criteria and designation requirements.

As part of the growth center program, the State offers specific regulatory incentives for local designations. For example, a municipality can request that the Land Use Panel review the growth center application and issue findings and conclusions under various Act 250 criteria. These findings and conclusions are then binding under any subsequent Act 250 review of development within the growth center, creating a more predictable regulatory environment. The District Environmental Commission also can consider proposed forms of off-site mitigation of impacts on important resources located within the growth center, including the off-site mitigation of primary agricultural soils at lower mitigation ratios. Finally, the municipality or property owners within the growth center may seek a master plan permit to streamline Act 250 approval of individual projects within the area of the growth center covered by the master plan.

Financial incentives are also offered as part of the growth center program. Municipalities with designated growth centers are eligible to create tax increment financing districts within these areas to fund needed infrastructure improvements. The Vermont Economic Development Authority incentives are also available. Priority is also given to growth centers (after designated downtowns and village centers) for state public facility investments, including funding for wastewater management facilities, technical and financial assistance for brownfield remediation, Community Development Block Grant Program implementation grants, and other benefits as they become available.

Projects within designated growth centers also receive priority (after designated downtown and village centers) for downtown transportation funds, transportation enhancement improvements, and grants for housing renovation and affordable housing construction programs. State officials responsible for selecting sites for the lease or construction of state buildings are also required to consider growth center locations.

## 2. County and Municipal Incentives

### *Riverside, California: Residential Infill Incentives*

Riverside, California has a Residential Infill Incentive Program. Residential infill is defined as the development, redevelopment or reuse of less than five vacant or

underutilized R-1 or RR zoned parcels of 21,780 square feet or less, surrounded by residential uses (80 percent of land uses within a half mile radius) where the proposed project is consistent with general plan designations and applicable zoning. The City provides a listing of eligible lots by neighborhood. Incentives are in the form of waived or adjusted fees. These include waivers of a Transportation Fee, Traffic Signal Fee, Grading Permit fee, Water Distribution Fee, and Street Light In-Lieu Fee. The Building Plan Check Fee is not waived, but is reduced.

*Sacramento County: California, Development Fee Deferral*

Sacramento County in California has three impact fee deferral programs: the Affordable Housing Program, the Non-Residential Program, and the Residential Program (discussed below). All three programs defer the payment of impact fees, including those associated with road, transit, drainage, water supply, library, and park improvements. The affordable housing program also includes fee waivers.

Projects eligible for the Affordable Housing Program must have at least 10 percent of units with affordable rents or affordable housing costs for very low income households (below 50 percent of the median income) or at least 49 percent of units with affordable rents or affordable housing costs for low income households (below 80 percent of median income). To receive a fee deferral, the applicant is required to submit an application, a Certification Letter from the Sacramento Housing and Redevelopment Agency, a preliminary title report, payment of 10 percent of the fees, and execution of an agreement, promissory note and deed of trust which may be subordinated to construction and acquisition financing. Fees are deferred to the close of escrow for each lot or 24 months from execution of deferral agreement, whichever is less. Interest penalties apply if deferred fees are not paid within the maximum fee deferral period. The annual cap is waived if the number of dwelling units is 200 or 5 percent of residential permits issued in the unincorporated county the previous year, whichever is greater. Fees become payable and interest penalties apply if the project does not provide the affordable housing units promised during a 24-month period.

The Non-Residential Program is designed to stimulate economic development that will result in long-term commitments to the county. Fees eligible for deferment are those associated with local public facilities financing plan area fees, county transportation development fees, and low income housing trust fund fees. Applicants are required to pay 20 percent of impact fees up front along with an application fee. Other requirements at the time of submission include a certificate of deposit, letter of credit, surety bond, lien against the property (subject to approval) and negotiable securities, if approved. Fees may be deferred to issuance of a certificate of occupancy, close of escrow, or for a predetermined period (not less than one and no more than five years). Interest accrues at the County Treasurer's rate of interest on pooled investments. Interest on deferred

amounts may be waived for targeted companies which demonstrate they bring 50 or more full-time jobs each paying over \$25,000 per year.

The third deferral program is the Residential Program. Fees eligible for deferment are local public facilities financing plan area fees and county transportation development fees. Applicants are required to submit an application, execution and recording of an agreement against the property, a payment of 10 percent of impacts fees, and an application fee. Fees for single family homes are deferred to the close of escrow for each lot or 15 months from date of issuance of permits, whichever is less. Fees for multi-family residential projects may be deferred to the close of permanent loan financing or 15 months from date of issuance of permits, whichever is less. Interest penalties apply if deferred fees are not paid within the maximum fee deferral period.

#### *Chandler, Arizona: Incentive Districts*

The City of Chandler, Arizona offers two incentive programs for projects within city-designated Incentive Districts: the Commercial Reinvestment Program and the Single-Family Infill Program. The Commercial Reinvestment Program promotes redevelopment in the older commercial and retail areas of the city to reduce vacancies. Financial incentives are offered to redevelop all or a significant portion of a site with new uses. Reimbursements can include costs of demolition and/or providing public infrastructure necessary to accommodate a new use on the site.

To be eligible, the applicant must be the owner of an existing retail center at a specified distance from the City's targeted areas; the vacancy rate must be 50 percent or higher than the average rate or the retail center must be at least 15 years old; the funding ratio between public and private investors must be 1:1; the project must be compatible with adjacent uses; and the project must obtain all necessary permits and variances, as required. The structure and level of reimbursement is based on the amount of private investment and the overall benefit derived from the city.

The Single-Family Infill Program targets the older neighborhoods in the City to address vacant lots and substandard structures. Projects are required to construct a LEED Certifiable or Energy Star qualified single-family attached or detached dwelling unit that is designed and constructed for owner occupancy. The project can be new development of a vacant parcel or the replacement of an existing unsafe dwelling unit that is not located within a residential subdivision that was platted fewer than 15 years ago. Parcels greater than 2.5 acres that front a major arterial street or are located at the intersection of two major arterial streets are not eligible. The program offers 50 percent reimbursement of applicable development fees including impact fees. System development fees may be awarded to an Energy Star qualified home. The program also offers 100 percent

reimbursement of applicable development fees if the project is LEED certified or Energy Star qualified and LEED certifiable.

#### **D. Non-Traditional TDRs**

Research for this study showed that there are many programs that take the original models of TDR programs and adapt them to meet local concerns and conditions through innovative measures. One example is Gunnison County, Colorado. Gunnison County's Residential Density Transfer (RDT) program is the "TDR-less TDR approach," as coined by Mike Pelletier, Rick Pruetz, and Christopher Duerksen<sup>3</sup>. The RDT program offers developers, as an incentive, the option to reduce the on-site open space requirement from 30 percent to 15 percent of the total project area at the receiving end, which expands the usable area of the site and increases the number of allowable lots. To calculate the RDT payment, the County Assessor values the site before and after the approval of the proposed subdivision, using its standard mass appraisal method, rather than third party appraisers. The RDT payment is calculated as 10 percent of the increased property value. The County evaluated many different scenarios with decision makers to prove to them that the reduction in open space requirement to 15 percent was enough to increase profits for the developer from the sale of additional lots. Pelletier et al note that not all properties can benefit from reduced open space requirements. However, it was determined that for those properties where an extra lot (or lots) is added, the value generated greatly exceeded the RDT payment, providing an incentive to participate.

Pelletier et al offer some consideration to the advantages and disadvantages to this type of program, including ease of adoption, reduced complexity compared with traditional TDR, extra incentives offered to developers, and conservation effectiveness. Basing the payment value as a proportion of land value offers an even playing field for all projects. Stakeholders argue that calculations in traditional TDR programs use specific values per lot or unit, which treats all sending and receiving areas alike when in some instances they have different circumstances.

### **VI. ESTABLISHING TDR PROGRAMS**

#### **A. Planning for a Municipal TDR Program**

A successful local TDR program begins with a strong public planning process and must be supported by comprehensive regulations, staff capacity, incentives and/or disincentives, and a local culture of "lessons learned." It is highly unlikely that a local TDR program will work perfectly from the start and local officials must be comfortable with the reality that amendments and modifications over the first several years of implementation should be expected. This is achieved through extensive involvement by local decision-makers, municipal staff from many different departments, and the general public in every stage of program development.

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<sup>3</sup> "TDR-Less TDR Revisited: Transfer of Development Rights Innovations and Gunnison County's Residential Density Transfer Program." American Planning Association PAS Memo, May/June 2010.

A strong planning process begins with determining community objectives for having a TDR program, which are typically to protect important areas from development and encourage growth elsewhere. Starting with preservation, a community must prioritize its objectives and this is done through a public process, engaging residents, property owners, decision makers, and other members of the general public. Lands that may be a primary concern are farmland, historic and cultural features, greenways, forested areas, wetlands, lands that impact water quality, and other critical habitat. Inventories are helpful in locating these resources and determining which areas are most at risk of being lost or adversely impacted. These are the sending areas of a TDR program.

Receiving areas are those that can accommodate additional growth or density. Identifying these areas should also be lead by town objectives. Every Washington County community has statements in their comprehensive plans regarding where they would like to see future growth, in the form of infill or redevelopment as well as new growth centers. As with locating sending areas, public participation for growth center designation is critical and requires careful planning and consideration. The public needs to understand the fiscal, housing, environmental, and economic benefits of this type of development and associated bonuses. The overall process for determining sending and receiving areas may take several months to a year.

Having clear, comprehensive regulations will influence how successful a program is implemented. As with identifying sending and receiving areas, crafting TDR policy and how a program is administered requires research and involvement from municipal departments and the public. TDR programs vary throughout the country and a community must determine how complex its program will be. Regulations articulate incentives, when and where TDR is applicable, and at times, the value of development rights, or sometimes referred to as an allocation formula, which can also vary greatly by community. Developing the “nuts and bolts” of a TDR program will take time, particularly vetting alternative approaches.

The complexity of a TDR program will also be influenced by a community’s administrative capacity. A community might already be implementing components of a TDR program, such as land preservation or offering incentives to encourage development. Can the community build on this existing capacity by adding another layer in the form of TDR? Further, determining how many municipal departments will be involved in the program and/or if outside resources will be required, such as appraisers, are decisions that need to be made.

In GrowSmart’s white paper (Sheehan, 2007; Appendix B), a bulleted list of 16 steps for implementation of TDR at the local level is provided. While these steps may apply to different communities at varying degrees, it provides an excellent reference for any local official planning to take a serious look at putting TDR into action.



## **B. The Potential Role of Rhode Island's Growth Center Program**

In the national research associated with the study, the concept of a growth center or something similar was used in other states as a means to focus and promote growth in specific areas. Some of these programs were used in association with a TDR program, some not. *Land Use 2025* identifies growth centers and, in 2002, a growth center program was developed in association with Governor Almond's Growth Planning Council. The Council has since been dismantled but the designation of growth centers is still a voluntary option to communities by amending their local comprehensive plans. There are currently no incentives associated with designation, but some communities have done so as a strategy to guide local growth as well as in the anticipation that benefits may be offered some time in the future. In 2011, Statewide Planning received funding from the US Department of Housing and Urban Development through its Sustainable Communities Initiative to delineate boundaries of proposed growth centers identified in *Land Use 2025* in collaboration with local communities, among other activities. They are also looking to reinvigorate their growth center program by developing incentives that will entice communities to participate.

As part of the TDR Study, the WCRPC and HW met with municipal leaders in the urban and suburban ring associated with the Providence metropolitan region to talk about TDR as well as the growth center concept (Appendix C contains a summary of those meetings.). With these communities, growth was discussed in two ways. First, municipal leaders were asked *where* they would like to see future growth in their communities. Second, they were asked *what types of incentives* would entice them to participate in the State's growth center program.

Consistent with *Land Use 2025*, municipal leaders interviewed as part of this study identify growth areas in their local comprehensive plans and are at various stages of implementation. As expected, several municipal leaders are focusing growth in existing developed areas including neighborhoods and villages and promoting mixed use infill and redevelopment. But overall there is a significant variety in the locations of desired growth and the type of growth based on unique conditions in each municipality. Common challenges to attracting new projects among all municipalities stem from national, state and regional economic conditions. The struggling housing market, stringent lending practices, and other drivers of local economic investment have stalled projects, ended projects, or resulted in overall lack of developer interest.

The second focus of discussion with these municipal leaders was the types of incentives that would make participation in the growth center program desirable. In general, municipal leaders felt that definitions and parameters regarding what could be identified as a growth center should be broad and the State should bear in mind the diverse conditions of rural, suburban, and urban communities. The potential incentive of added density was considered a low priority, particularly for more urban communities. Urban areas either felt that some local growth areas already offered density incentives to developers, and in other areas of their cities they were focused on reducing density. The

following incentives were strongly recommended as attractive options for individual municipalities:

- Monetary assistance or seed money to invest in revolving loan programs that can be put toward commercial building façade improvements or other building maintenance issues;
- Technical and monetary assistance to municipalities for infrastructure improvements, including upgrades and extensions of water, sewer, and fiber optic systems;
- Streamlined state-level permitting;
- The revitalization of programs like the Enterprise Zone, the Historic Tax Credit, and any other vehicles that allow for the award of tax credits;
- Design and construction assistance to municipalities for streetscape improvements;
- State-led promotion of growth centers as areas for economic development through effective “clearinghouse” style information sharing and other marketing techniques;
- Strong regional transportation planning and implementation to link growth centers with ongoing efforts associated with the MBTA, TF Green Airport, and Rhode Island Public Transit Authority (RIPTA);
- Technical assistance to municipalities for more complex redevelopment initiatives such as those association with creating Tax Increment Financing Districts or coordinating and financing environmental clean-up (brownfields); and
- Overall technical assistance to municipalities on development/redevelopment projects in the anticipation that staffing will be cut due to local budget constraints.

Overall, communities were receptive to participating in a revised growth center program that offered monetary incentives and technical assistance. Both urban and suburban municipalities agreed that incentives would need to focus on improvements to local infrastructure, including water and sewer upgrades and extensions, as well as streetscape improvements. Incentives in the form of technical assistance would also help communities with more complex redevelopment strategies or with limited staffing.

### **C. Inter-Municipal TDR Programs in Rhode Island**

As part of the TDR Study, the concept of an inter-municipal TDR program was also explored. To gain insight into the opportunities and challenges associated with this type of program, as previously mentioned, the WCRPC and HW met with municipal leaders in the urban and suburban ring associated with the Providence metropolitan region. To help frame the idea of inter-municipal TDR, WCRPC and HW first discussed the concept of “growth centers,” which is summarized earlier in this report. In addition to talking about growth centers, municipal leaders meetings also discussed implementing in a local TDR program as well as needed incentives and the benefits and challenges of participating in an inter-municipal TDR program.

## 1. Opportunities

The discussions with municipal leaders indicated that opportunities for an inter-municipal or statewide TDR program are limited. Many communities favor the idea of a locally administered TDR program, and the leaders from more suburban communities discuss TDR in their local comprehensive plans as a way to preserve natural resources and direct growth to existing neighborhoods and villages or even new growth areas. All communities favored wide-range education on proposed program concepts as they are developed, equally for themselves as well as other local officials and decision-makers.

## 2. Challenges

All municipal leaders agreed that it would be a challenge to convince local councils to accept growth from other areas of the state, even with incentives. Of particular concern was the issue of housing and municipal costs related to added school children. Further, accepting additional housing may be related to affordable housing units as they are defined by the State's affordable housing mandate. This raised concerns not only with the added costs to provide needed social services to lower-income populations that would occupy these units, but also with the equitable distribution of affordable housing throughout the state.

Acceptance of development rights to leverage higher density of commercial and/or industrial types of uses might be more plausible after extensive education of local councils and decision makers on the benefits to a receiving community. However, it does not appear likely that a community would send away an opportunity to build its local tax base and relieve some of the residential tax burden, a primary goal in most comprehensive plans. Therefore, this scenario would most likely work by sending the development rights for housing in Sending Communities to commercial/industrial areas in Receiving Communities. This issue would need further exploration.

### **D. State Enabling Legislation**

As with many innovative zoning tools, the State of Rhode Island enables the use of TDR through its statutes. In the current legislation, TDR is directly addressed in §45-24-46.2 and §45-24-46.3 for the Towns of North Kingstown and Exeter. While the City of Providence has allowed for the use of TDR for some time, the North Kingstown program is generally viewed as the most comprehensive in the state and also involves the potential for limited inter-municipal transfer with Exeter. These statutes were written to support the efforts of North Kingstown and Exeter at a specific time in Rhode Island's TDR history. However, with more communities interested in the potential applicability for TDR, a new state-wide statute should be adopted. As part of this project, HW researched

the enabling legislation in several other states and developed a “working draft” for Rhode Island. One of the most important components, which is not addressed in current legislation, is the use of a “fee-in-lieu” of TDR option. This approach has added flexibility in other jurisdictions and a perception of predictability relative to costs on the development side. The draft of new RI state legislation can be found in Appendix E.

## **VII. CONCLUSION**

Growth in Washington County continues to outpace the rest of the State. While the population statewide has become stagnant, the 2010 US Census reported that communities like South Kingstown, Richmond, and Exeter increased their population between six and 10 percent during a decade that ended in a recession. Over the past 20 years, many Washington County towns implemented smart growth strategies to either slow the pace of growth to meet infrastructure capacity or to achieve better design that protects important natural and cultural resources, including cluster subdivisions, mixed use village centers, and conservation design.

The County is also where much of the State’s large forested areas, viable farmland, critical natural resources, and important coastal features. Many of these can be protected through the use of TDR. Two communities have either implemented or are close to adopting TDR regulations. The remaining Washington County communities identify TDR in their comprehensive plans as a way to manage growth pressure while still protecting its critical resources. TDR can also be used to address properties that may be impacted by sea level rise, groundwater quality, and offering participants in the Farm, Forest, and Open Space Program another option that protects properties in perpetuity. This is an opportunity to move the TDR concept forward.

Research revealed that TDR programs across the country are diverse in their objectives as well as administration. Across all programs, however, gaining community support was the key to successful. This support was developed while the program was being crafted, through a strong planning process with public participation that reached out to municipal departments, local boards and commissions, and the general public. Program development takes considerable time to identify sending and receiving areas as well as the language of regulations. TDR is a complex process that requires careful deliberation and extensive public education.

What can act as a starting point for TDR in Rhode Island is a viable growth center program. Through a grant from HUD, the State is in the process of revitalizing its program to add incentives that will entice communities to participate. Preliminary discussions with municipal leaders indicate that there is a willingness to participate if incentives relate to financial support to improve or upgrade infrastructure or rehabilitate commercial corridor aesthetics as well as technical assistance for more complex programs like brownfields redevelopment or TIF districts. The Enterprise Zone Program, the Historic Tax Credit, and others were also seen as successful tools to revitalize urban

areas and reinstituting these programs will help local communities focus new investment in their designated growth centers.

While local TDR programs are feasible in Rhode Island, a regional or statewide TDR program will require additional assessment. Challenges relate to the type of development being sent and needed municipal services to accommodate that development. Of particular concern is sending additional housing and the cost implications for school children and social services. Communities may be more willing to accept commercial development, but education of local officials will be critical. Further exploration is needed.

## **VIII. RESOURCES**

The following links provide further information on programs reviewed as part of this study as well as resources for additional research.

*Beyond Takings and Givings: Saving Natural Areas, Farmland and Historic Landmarks with Transfer of Development Rights and Density Transfer Charges*, Pruetz, Rick. Arje Press, 2003.

*Tracking Transferable Development Rights*, M-NCPPC. Prepared by Research and Technology Center, January 14, 2008. Obtained January 30, 2012 from <http://www.montgomeryplanning.org/research/documents/TDRstatusreport-finaldraft.pdf>

*“Transfer of Development Rights: A Study of Its Use in Other States and the Potential for Use in Rhode Island”* (Sheehan, 2007). <http://www.growsmatri.com/pdfs/FINAL%20TDR%20whitepaper.pdf>

### **Websites of Programs Reviewed**

Boulder County, CO

[www.bouldercounty.org/live/environment/land/pages/openspacefunding.aspx](http://www.bouldercounty.org/live/environment/land/pages/openspacefunding.aspx)

<http://www.bouldercounty.org/live/property/plan/pages/lutdr.aspx>

<http://www.bouldercounty.org/live/property/plan/pages/tdcmain.aspx>

Chandler, AZ

[www.chandleraz.gov/Content/ChandlerInfillIncentivePlan.pdf](http://www.chandleraz.gov/Content/ChandlerInfillIncentivePlan.pdf)

Commonwealth of Massachusetts

[www.mass.gov/envir/smart\\_growth\\_toolkit/pages/mod-40R.html](http://www.mass.gov/envir/smart_growth_toolkit/pages/mod-40R.html)

Connecticut, State of

[www.ct.gov/opm/cwp/view.asp?A=2985&Q=413024](http://www.ct.gov/opm/cwp/view.asp?A=2985&Q=413024)

Douglas County, Co  
[www.douglas.co.us/openspace/](http://www.douglas.co.us/openspace/)

Franconia, PA  
[www.franconiatownship.org/documents/FrancTalk08FarmInsert.pdf](http://www.franconiatownship.org/documents/FrancTalk08FarmInsert.pdf)

Georgia, State of  
[http://glcp.georgia.gov/00/channel\\_title/0,2094,82613131\\_114687036,00.html](http://glcp.georgia.gov/00/channel_title/0,2094,82613131_114687036,00.html)

King County, WA  
<http://www.kingcounty.gov/property/permits/codes.aspx>  
<http://www.kingcounty.gov/environment/stewardship/sustainable-building/transfer-development-rights.aspx>

Livermore, CA  
<http://www.codepublishing.com/ca/Livermore/Municipal/Livermore03/Livermore0327.html>  
<http://www.cityoflivermore.net/citygov/cd/planning/general.asp>

Maryland, State of  
[www.mdp.state.md.us/OurProducts/pfamap.shtml](http://www.mdp.state.md.us/OurProducts/pfamap.shtml)

Montgomery County, MD  
[http://www.montgomeryplanning.org/community/plan\\_areas/rural\\_area/planning\\_process/about\\_the\\_process/tdr.shtm](http://www.montgomeryplanning.org/community/plan_areas/rural_area/planning_process/about_the_process/tdr.shtm)  
<http://www.montgomerycountymd.gov/agstmpl.asp?url=/content/ded/agsservices/index.asp>

Old Tappan, NJ  
[http://oldtappan.net/open\\_space.cfm](http://oldtappan.net/open_space.cfm)

Pinelands, NJ  
<http://www.state.nj.us/pinelands/landuse/perm/pdc/>  
<http://www.state.nj.us/pinelands/images/pdf%20files/pinelandsprotectionact1.pdf>

Riverside, CA  
[www.riversideca.gov/planning/zoning-infill.asp](http://www.riversideca.gov/planning/zoning-infill.asp)  
Sacramento County, CA  
[www.msa2.saccounty.net/FeeDeferral/Pages/default.aspx](http://www.msa2.saccounty.net/FeeDeferral/Pages/default.aspx)

San Juan County, WA  
[www.co.san-juan.wa.us/treasurer/landbank.aspx](http://www.co.san-juan.wa.us/treasurer/landbank.aspx)  
[www.sjclandbank.org/aboutus.html](http://www.sjclandbank.org/aboutus.html)

Santa Clarita, CA  
[www.santaclaritaopenspace.com/](http://www.santaclaritaopenspace.com/)

Sarasota County, FL  
<http://www.scgov.net/PlanningandDevelopment/CompPlan/TOC.asp>

Tahoe Regional Planning Agency, CA and NV  
<http://www.trpa.org/documents/docdwnlds/ordinances/COCh34.pdf>  
<http://www.trpa.org/default.aspx?tabindex=10&tabid=15>

Vermont, State of  
[www.vpic.info/pubs/implementation/pdfs/9-Growth.pdf](http://www.vpic.info/pubs/implementation/pdfs/9-Growth.pdf)

Warwick, NY  
[http://www.townofwarwick.org/agriculture/cpppdocs/community\\_preservation\\_plan.pdf](http://www.townofwarwick.org/agriculture/cpppdocs/community_preservation_plan.pdf)

### **Other Resources**

Community Preservation Coalition  
[www.communitypreservation.org/](http://www.communitypreservation.org/)

Conservation Finance Forum  
[www.conservationfinanceforum.org/resources.html#tax](http://www.conservationfinanceforum.org/resources.html#tax)

Peconic Land Trust, Southampton, NY  
[www.peconiclandtrust.org/community.html](http://www.peconiclandtrust.org/community.html)

The Trust for Public Land LandVote Database  
[www.quickbase.com/db/bbqna2qct?a=dbpage&pageID=10](http://www.quickbase.com/db/bbqna2qct?a=dbpage&pageID=10)





# Appendix A

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## Washington County Land Development Trends

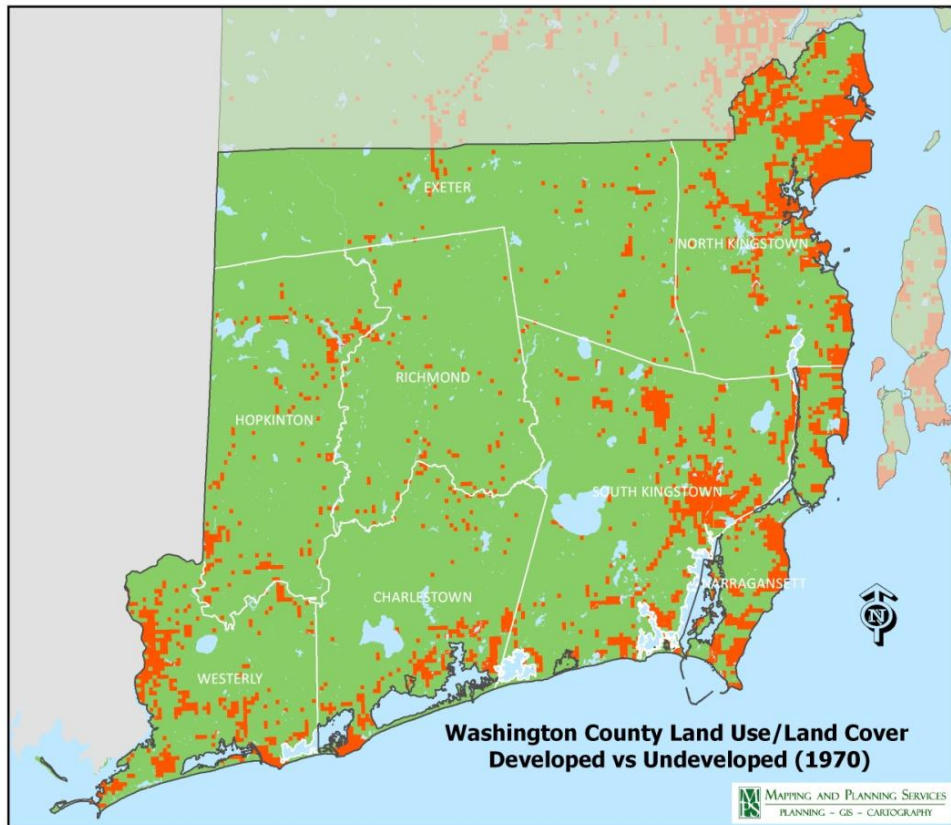
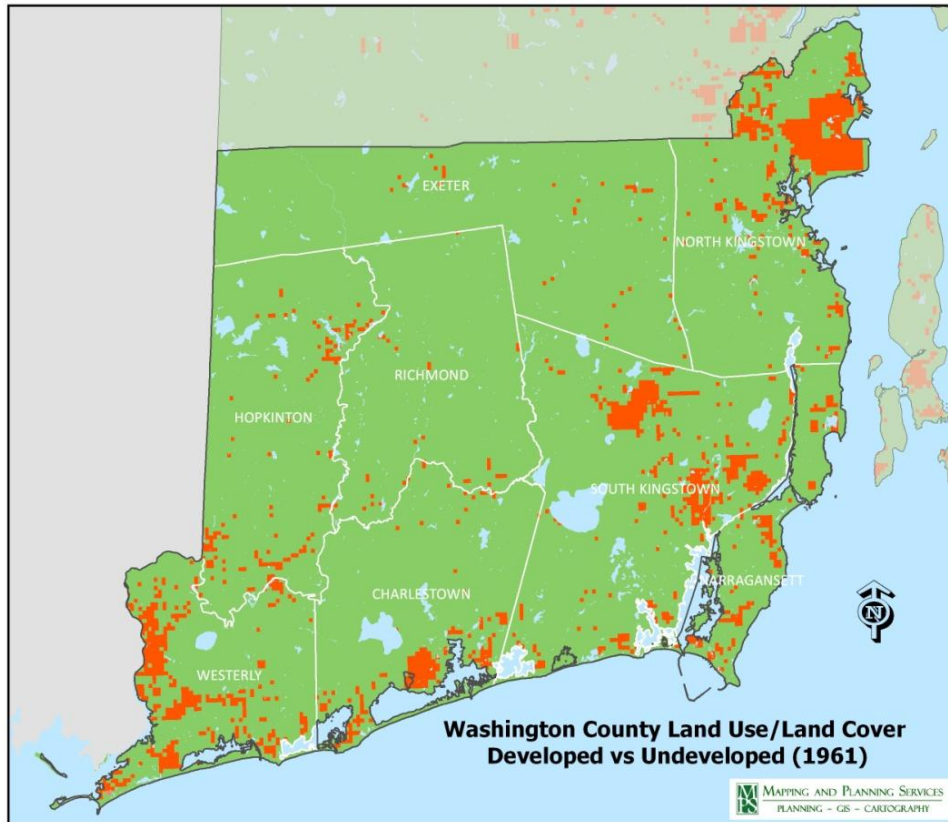


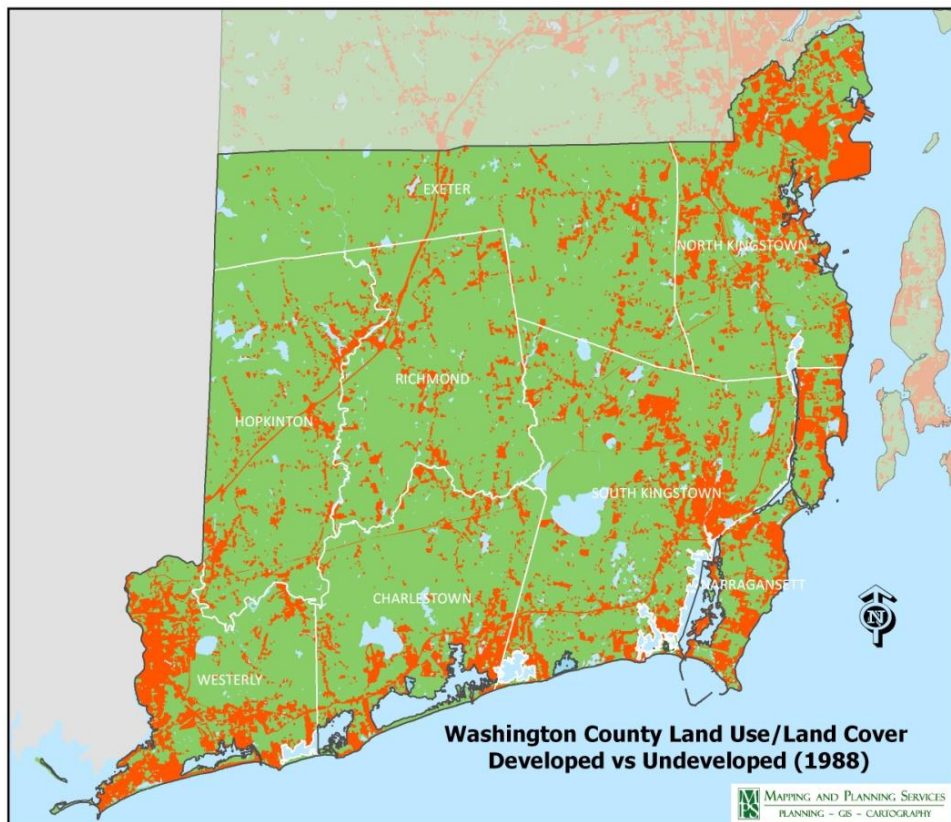
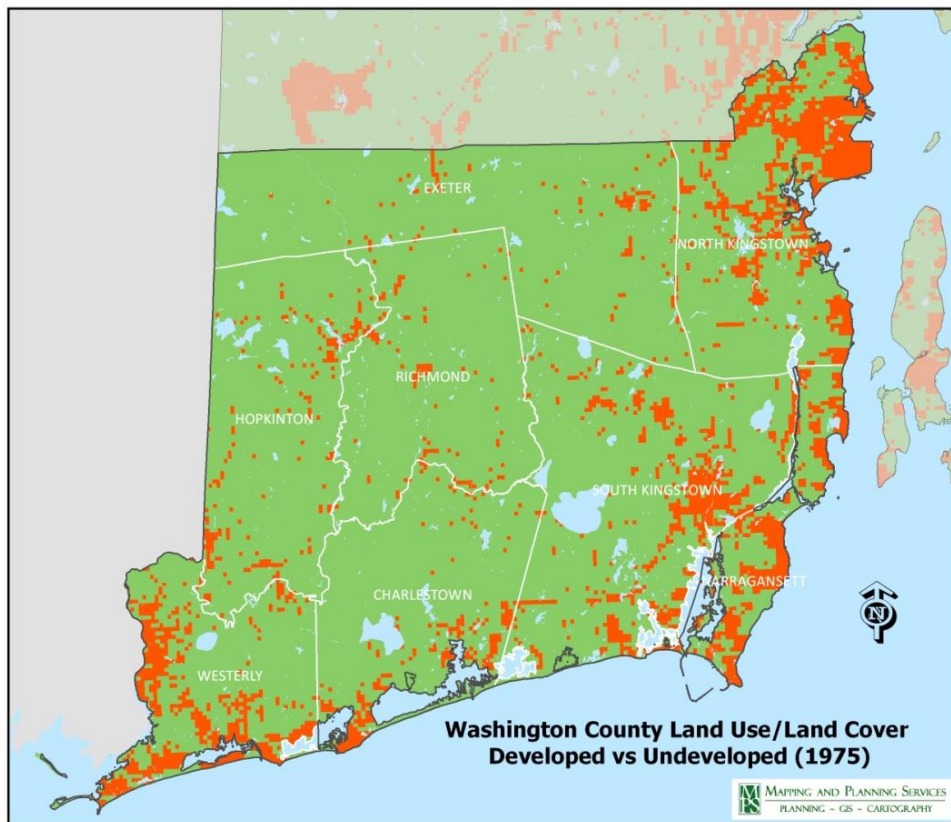
## APPENDIX A – LAND DEVELOPMENT TRENDS IN WASHINGTON COUNTY

The following series of maps shows land development trends in Washington County from 1961 to 2004. Orange represents developed areas, including residential and non-residential uses, transportation (roads, rail) and other infrastructure (water and wastewater treatment, utility corridors). Green represents farmland, forests, woodlands, wetlands, open water and barren land (beaches, rocky outcrops).

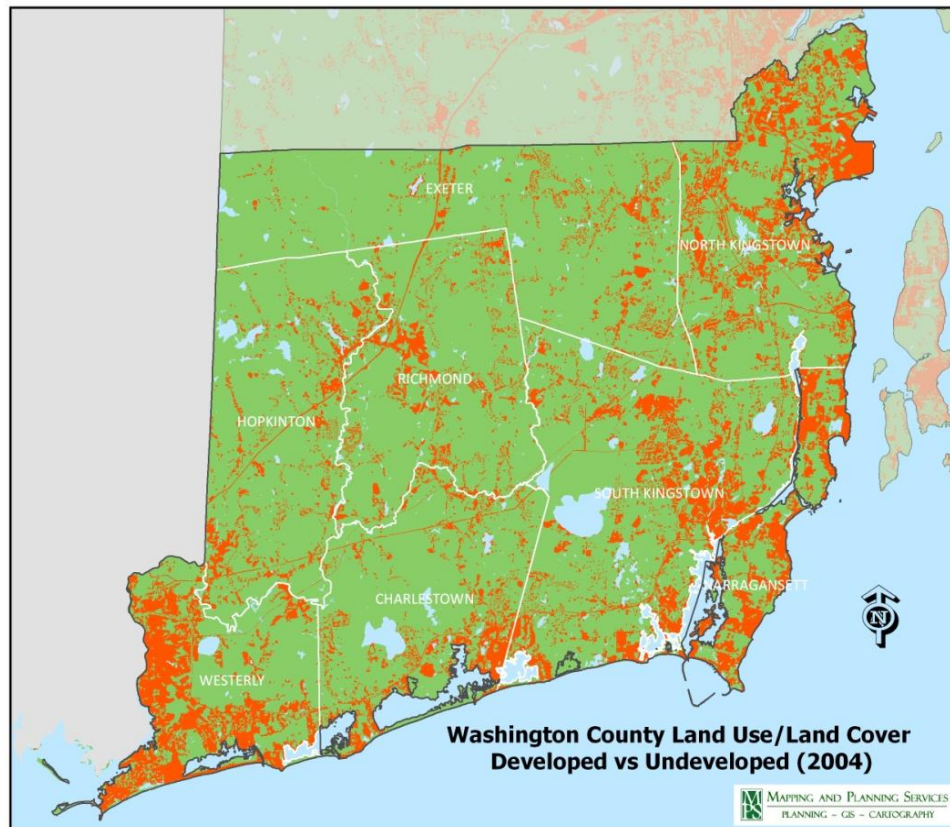
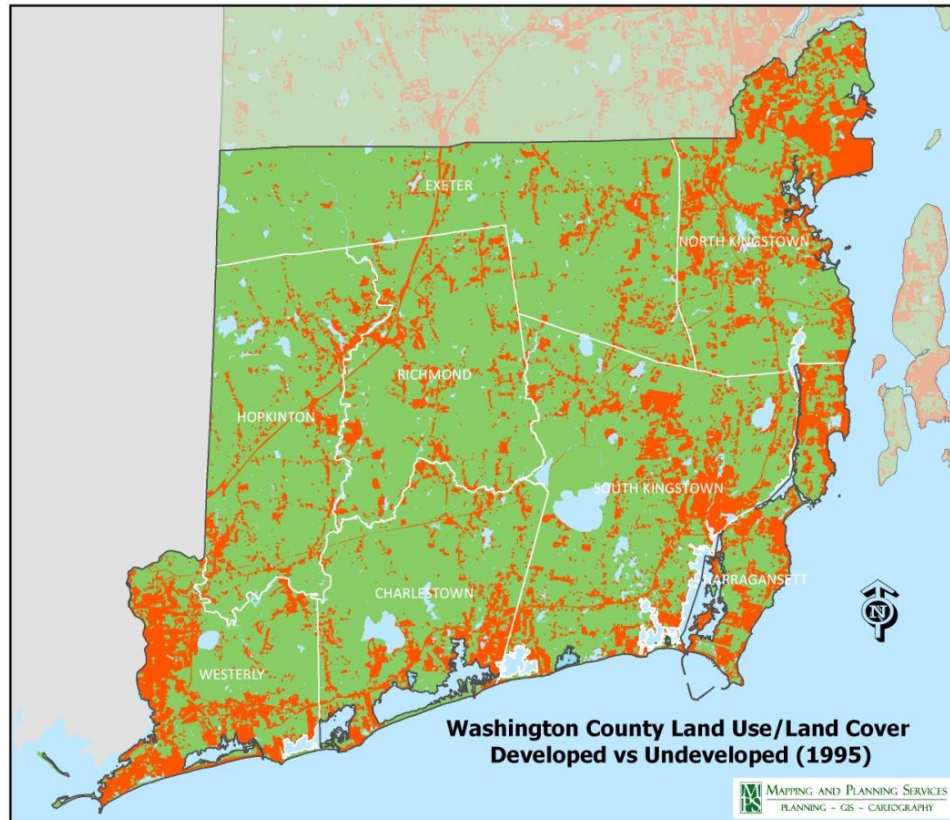
All the data used for the maps were sourced from RIGIS. These maps should be used for general planning purposes only and not for site-specific analysis. Comparison between maps may reveal errors or inconsistencies between these datasets.

It should be noted that over this 43-year period the method for collecting and/or interpreting land use/land cover has changed, as well as the land use coding schemes. The land development trend maps are highly generalized, are based on different collection and update methodologies, as well as use different data source scales and minimum mapping units (m.m.u). For example, the 1961 map uses vector data from a field windshield survey in 1961 that was based on land use coding for points within approximately 10 acre grid cell analysis. The 1970 and 1975 maps utilize the 1961 data enhanced by aerial photo and map updates. The 1988 map is based on 1:24,000 aerial photograph interpretation and manually digitized, with no field verification, based on ¼ acre m.m.u. The 1995 map is based on an update of the 1988 base source using 1995 digital orthophotography. Then the 2003/04 map is based on land cover/land use derived using semi-automated methods and based on 1:5000 scale imagery captured in 2003-2004, to ½ acre m.m.u.









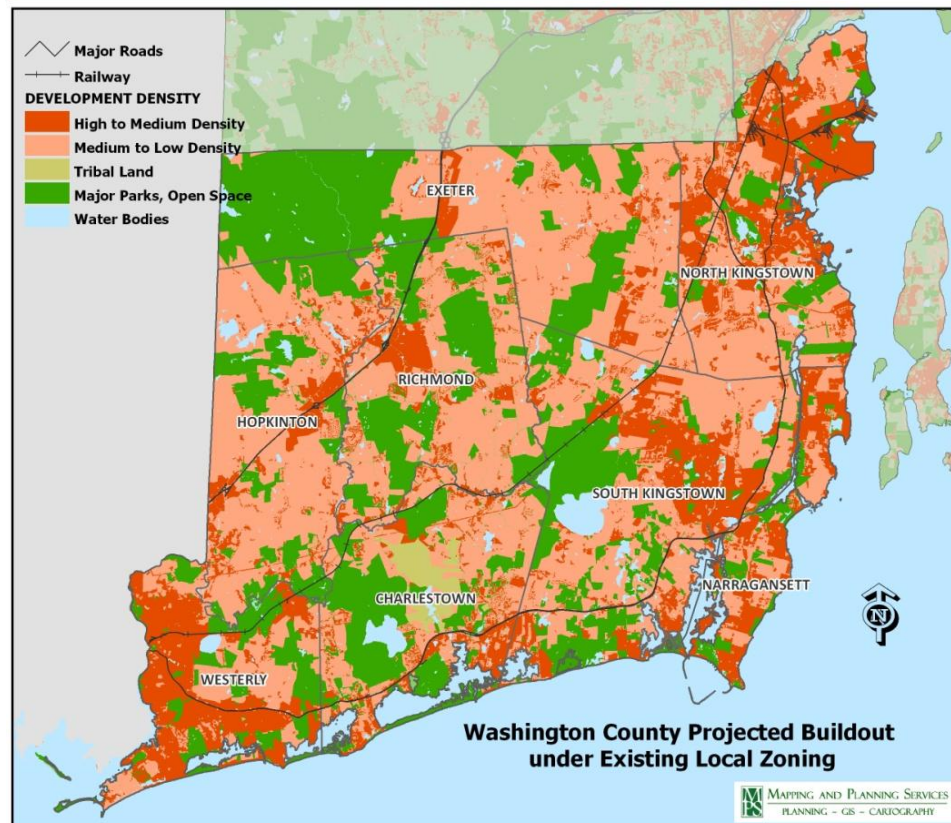
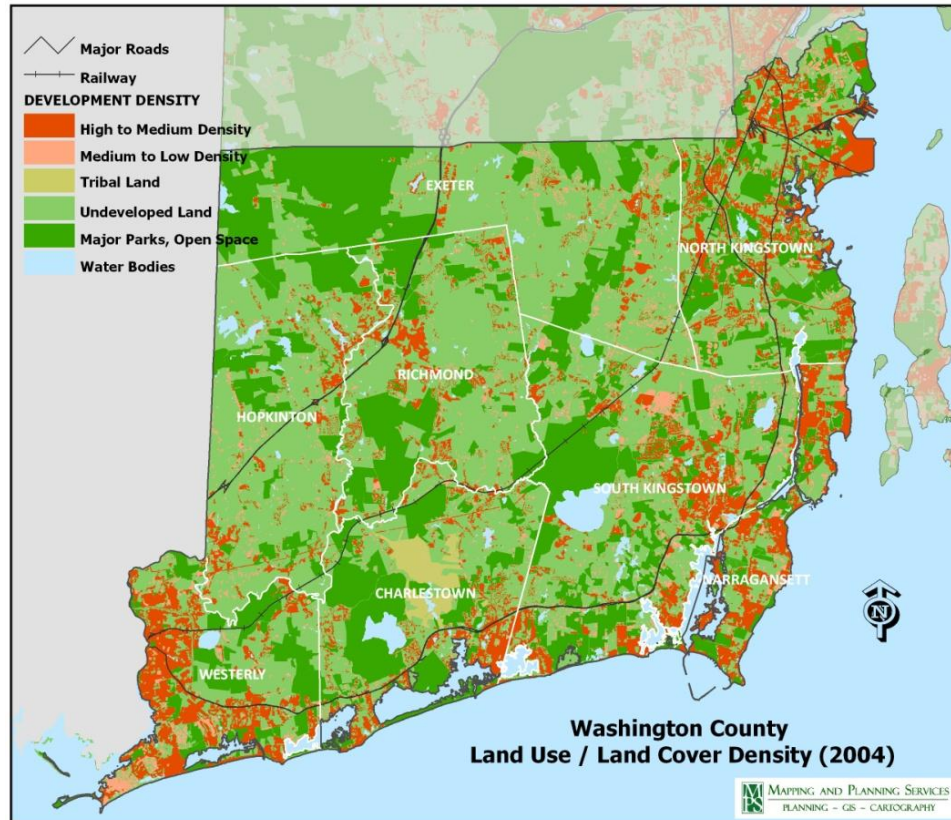
The next series of maps was developed to conceptualize possible buildout scenarios with and without the use of TDR. The first map shows 2004 land uses.

The second shows buildout under existing zoning. On this map, digital zoning data was available from municipal GIS databases, except for the Town of Exeter, where no data was available. Instead digital future land use plan data was used for this municipality.

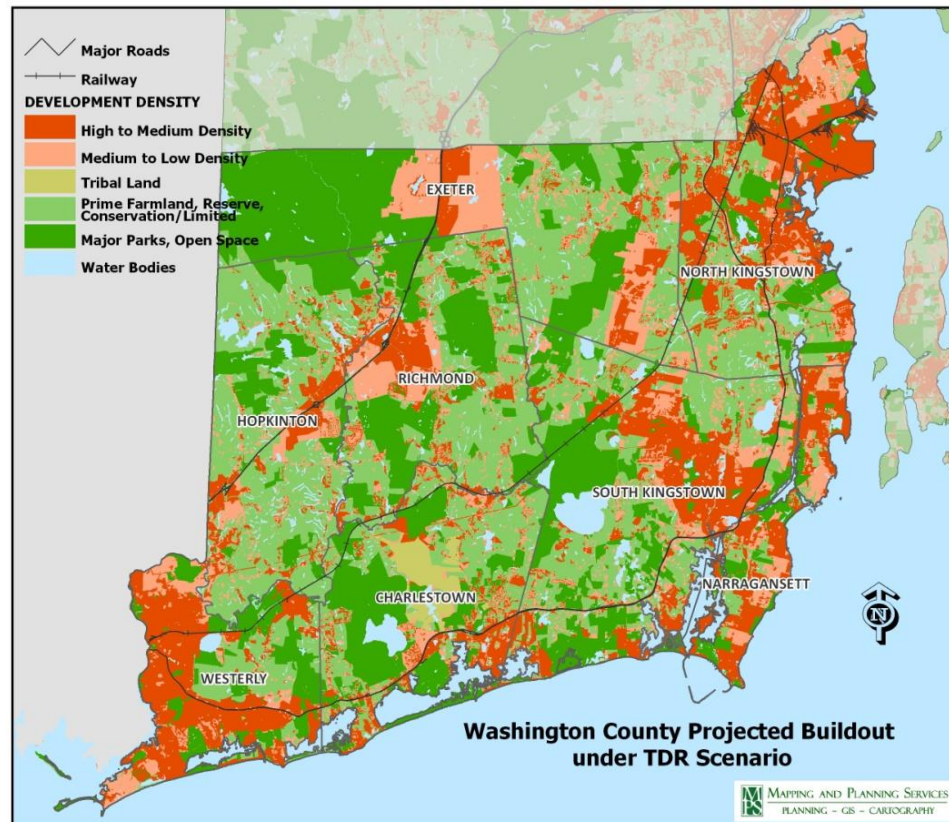
The final map shows buildout if TDR were used to control and target growth and conservation. In this map, it was assumed that development would focus around existing, locally-identified growth areas and conservation would continue adjacent to existing protected resources. It was also assumed that the use of TDR would protect prime agricultural soils from development.

For all maps, the following assumptions were made to consolidate land use categories:

- High to Medium Density
  - High density residential (8 houses or more per acre)
  - Medium high density residential (4-8 houses per acre)
  - Medium density residential (1-4 houses per acre)
  - Commercial
  - Mixed use
  - Industrial and manufacturing
  - Quonset/Davisville
- Medium to Low Density
  - Medium low density residential (1 house per 1 to 2 acres)
  - Low density residential (1 house per 2 to 4 acres)
  - Institutional and public uses
- Major parks and open space
- Prime farmland, reserve, conservation, limited (TDR scenario)
  - Agricultural uses
  - Very low density residential (greater than 4-acre lots)
  - Resource-based development
  - Limited non-residential development







## Reference Citations

1961, 1970 and 1975

RIGIS, USGS, 19890601, Environmental Inventory; s44lei75: RIGIS, Providence, Rhode Island.

Online links: <http://www.edc.uri.edu/rigis/data/environment.html>

1988

Resource Mapping Center-UMASS at Amherst, RIGIS, 19930101, 1988 Land Use for Rhode Island; s44llu93: RIGIS, Providence, Rhode Island.

Online links: <http://www.edc.uri.edu/rigis/data/planningCadastre.html>

1995

RIDOA - Statewide Planning Program, 20050215, 1995 Land Use for Rhode Island; rilu95c: Statewide Planning Program, Providence Rhode Island.

Online links: <http://www.edc.uri.edu/rigis/data/planningCadastre.html>

2003/04

Sanborn, 2007, Land Cover/Land Use for Rhode Island 2003/04.

Online links: <http://www.edc.uri.edu/rigis>

## Land Use 2025

Division of Planning, RI Statewide Planning Program, 20060413, Land Use 2025; landuse2025: State Guide Plan Element 121 Land Use, Division of Planning, RI Statewide Planning Program, Providence, Rhode Island.

Online links: <http://www.planning.ri.gov/landuse/121/landuse2025.pdf> and <http://www.edc.uri.edu/rigis>

## Zoning and Future Land Use

Town of Charlestown, 2011, Zoning; 2011\_zoning

Town of Exeter, 2009, Future Land Use; futurelanduse09

Town of Hopkinton, 2011, Zoning; zoning10\_2011

Town of Narragansett, 2005, Zoning; zoning-6-8-05

Town of Richmond, 2010, Zoning; Zoning 9-7-10

Town of South Kingstown, 2010, Zoning; SKParcels\_Dec2010

Town of Westerly, 2009, Zoning; Zoning09102009\_DRAFT

## Appendix B

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*“Transfer of Development Rights: A Study of Its Use in Other States and the Potential for Use in Rhode Island”* (Sheehan, 2007).

**TRANSFER OF DEVELOPMENT RIGHTS:  
A STUDY OF ITS USE IN OTHER STATES  
AND  
THE POTENTIAL FOR USE IN RHODE ISLAND**

**Researched and written by  
Michelle Sheehan  
Graduate Research Intern  
Grow Smart Rhode Island**

**August, 2007**

## 1. WHY IS GROW SMART STUDYING TRANSFER OF DEVELOPMENT RIGHTS (TDR)?

Rhode Island is a densely populated state with a recent history of rapid development. Over the past 50 years sprawling residential and commercial growth patterns have eaten up valuable open space and farmland at an alarming rate. Between 1961 and 1995 Rhode Island's consumption of land increased at 9 times the rate of our population growth over the past 50 years<sup>1</sup>. Despite this trend, Rhode Island still maintains a unique rural-urban distinction with 60% of the state remaining as forested lands and 75% of the population housed in a 40 mile stretch of land along Narragansett Bay.

The Statewide Planning Program has identified the maintenance of this rural-urban distinction as a major goal in its *Land Use 2025* plan, adopted in 2006. Rhode Island's success in retaining its urban-rural distinction will depend largely on land-use planning and decisions by cities and towns. The municipalities need to tackle two challenges: 1) preserving open spaces and agricultural lands and 2) promoting growth and facilitating appropriate levels of density in traditional centers and, in some cases, in areas designated as new centers.

*Rhode Island's success in retaining its urban-rural distinction will depend largely on land-use planning and decisions by cities and towns.*

Both challenges are very difficult. While private and municipal land trusts, non-profit organizations and state agencies are involved in open space and agricultural land preservation throughout the state, they are operating with limited financial resources at a time when the cost of land has increased significantly. In fact, Rhode Island's farmland is now the most expensive in the nation, averaging \$12,500 per acre as of January, 2006, up 11.6% from the year before.<sup>2</sup> At the same time, municipalities are studying strategies for achieving the levels of residential and commercial density needed to create successful centers that will attract new business and be viewed as attractive places to live. On the one hand, municipalities see the value of allowing developers more density in compact centers; on the other hand, municipalities want to protect the character and livability of the centers. Is it possible to achieve these twin goals without requiring overly onerous application reviews that would discourage developers from undertaking projects?

Municipalities and county governments in other parts of the country have successfully used Transfer of Development Rights (TDR) to address both the need to preserve land and the need to promote compact growth, and for several years TDR has been identified as a possible strategy for Rhode Island. In 2001, Rich Taintor, of Taintor and Associates, completed a study of TDR for the South County Watersheds Technical Planning Assistance Project. This valuable guide continues to serve as a resource for planners and planning boards in the state. More recently, *Land Use 2025* suggested TDR as a possible strategy, The Borderlands Project sponsored a workshop on TDR, and several communities are exploring the potential benefits of implementing TDR programs. Given the continued interest in TDR in Rhode Island and the fact that new information about TDR programs around the country has become available since the Taintor report was completed, Grow Smart thought it would be valuable to take a fresh look at TDR to determine whether it is a strategy that should be promoted more actively in Rhode Island.

This paper identifies several programs and models with conditions relevant to Rhode Island and outlines a series of steps and best practices for implementing a successful TDR program.

## 2. OVERVIEW OF TDR

### Definition of TDR:

TDR is a voluntary and market-based land use tool used by communities to direct development away from rural, open space, and farm lands and towards areas most appropriate for growth. **The goal of the program is to help to implement community land-use goals by having an exchange take place: the permanent preservation of lands that a community wants to save is exchanged for extra development in areas a community has designated for growth.**

Transfer of development rights is easier to understand in the context of the property owner's bundle of rights. These rights are given and recognized by the government and are subject to limitations and restrictions, as well as to the police powers of taxation and eminent domain. Often compared to a bundle of sticks, they include water and mineral rights and the right to subdivide or develop the property. Each of the rights can be separated from the bundle and leased or sold.

The approach of separating and selling development rights is already being used in Rhode Island in various Purchase of Development Rights (PDR) programs. For example, farmers in Rhode Island can apply to the Agricultural Land Preservation Commission (ALPC) to sell the development rights to their farmland. The ALPC, with staff assistance from the Rhode Island Department of Environmental Management (RIDEM), selects farms for protection on the basis of their agricultural value, soil quality, size, location, and development pressure. Once chosen for protection, the farmer can sell the right to develop his land to the ALPC, which then permanently restricts the land from development. The farmer retains possession of the land and can continue to farm it. A number of land trusts in Rhode Island have also purchased development rights from property owners as a way of conserving land. Under both these programs, once the development rights have been sold they are permanently extinguished.

Under Transfer of Development Rights, as in Purchase of Development Rights, landowners in an open space or agricultural district can voluntarily sever development rights from their property and sell those rights while retaining ownership of the land. However, instead of being extinguished, the development rights continue to exist and can be transferred to another area. These rights, known as development credits, are bought by developers and used to get increased density for projects in designated growth areas. Both programs preserve land; TDR is unique in its focus on using development rights to create compact mixed-use development.

There are approximately 150 TDR programs nationwide, with the majority of programs in CA, PA, MD, and FL. The most successful programs are Montgomery County, MD – which has preserved 45,000 acres - and The Pinelands, NJ – which has preserved 47,000 acres.

TDR programs generally designate “**sending areas**” and “**receiving areas**.” The sending areas are lands that the community wishes to protect and can include agricultural districts, open space, land with rural character, critical habitat, and water resource areas. These sending areas are the areas in which property owners can sell development rights. Receiving areas are town centers and land appropriate for development due to its proximity to infrastructure and public services. These receiving areas are the areas in which developers can use development rights that they have purchased in order to build a project with a greater density than would be allowed under current zoning.

### Benefits of TDR:

- Enables communities to guide development according to the vision of their comprehensive plan.
- Preserves open space and agricultural lands without public expenditure.
- Encourages development in appropriate areas with existing infrastructure.

- Saves money by avoiding added infrastructure costs for development on greenfields and by maximizing the efficient use of existing infrastructure.
- Promotes mixed-use and compact development.

### Limitations of TDR:

- TDR is only one of many tools that will be necessary to redirect the course of development patterns. It cannot work alone.
- It is a fairly complicated program requiring a good deal of research, administration, and facilitating.<sup>3</sup>
- TDR is not the right tool for all communities.
- Because TDR is a market based system, municipalities do not have the same level of control over the outcomes as they do with zoning. TDR cannot control which parcels will ultimately be preserved.
- TDR has not consistently been successful in changing the development patterns in town centers.<sup>4</sup> This is partly because fostering compact, mixed-use development has been an afterthought of many TDR programs which have inadequately considered the steps needed to ensure that the existing pattern of development changes.

## 3. CREATING A TDR PROGRAM

**Necessary Implementation Activities** The following series of activities are guidelines for creating a TDR program. Though many of these activities overlap, each one is critical to the success of a TDR program and needs to be considered separately. For concrete examples from actual TDR programs for each of these steps please see Appendix A.

- **Create a public advisory group.** Ensure that all interested members of the public are present, including the farming community, developers, landowners, conservation interests, and the general public. Foster public participation throughout the process of creating the TDR ordinance to ensure that it works for the parties that will ultimately be involved in the workings of the program.<sup>5</sup>
- **Educate the public.** Make sure the advisory group and the general public are informed about and understand how TDR works, what the resources are that it seeks to protect, the benefits of compact development, and how the program will affect individual property owners and development patterns. This should be an ongoing process throughout the life of the TDR program and should target those most affected by and critical to the program including the farming community, developers and private property owners.
- **Identify the goal** of the program. The goal of the program should reflect the dual nature of TDR and should refer both to a community's desire to protect specific open space, agricultural, and/ or environmental resources and to the community's desire to foster a certain amount of compact development in appropriate areas. The goal should relate directly to elements expressed in the comprehensive plan. Some programs state a goal of a specific number of acres to be preserved. Others start with a calculation of how many additional units the receiving area should have according to infrastructure capabilities (or plans for added infrastructure), projected housing needs, and goals outlined in the comprehensive plan.
- **Identify potential sending area(s).** The sending area(s) should consist of land and resources which the municipality wishes to protect such as agricultural lands, rural character, open space, forest lands, watershed protection areas, and critical habitat, but which are facing development pressures. It is important that these areas be identified in the local comprehensive plan master plan.<sup>6</sup> The sending area should be sized so that there are sufficient numbers of eligible parcels to accommodate a healthy number of development credit transactions.<sup>7</sup> Programs that identify multiple resources to be preserved often get broader public support.<sup>8</sup>



- **Identify potential receiving area(s).** Receiving areas should be zones which are most appropriate for compact, mixed-use development. This area might cover or be adjacent to downtown area or a village center that has existing infrastructure such as sewers and water and can accommodate more development. This area needs to have a demonstrated demand and capacity for increased density in order to be successful and to stimulate the market for development rights.<sup>9</sup> Successful receiving areas need to be carefully planned (see box).<sup>10</sup>

#### Successful Receiving Areas:

Receiving areas should be vibrant and compact centers with mixed uses.

- **Undertake an internal feasibility study.** Determine whether there is sufficient government capacity, public interest, and political will to move forward with the creation of a TDR program. An overworked planning staff with no time to dedicate to outreach, education and marketing can contribute to program failure<sup>11</sup>.

- Carefully consider and plan for the affects that the new development will have on the receiving area. This includes ensuring that parking requirements are sufficient to accommodate mixed-uses and examining the height restrictions to ensure they do not hamper TDR development.

- **Conduct a market study.** A thorough study of the current and projected real estate market should be conducted in order to determine if there is sufficient market demand for a TDR program. The program area must be a high growth area with significant development pressures. There must also be a specific demand for compact development in the appropriate areas.<sup>12</sup> There must be enough landowners and developers who would be willing to participate in the program given the projected market value of the development credits.

- Create design guidelines for developments to ensure they harmonize with the existing structures.

- **Determine how many development credits each sending area property is allowed to transfer.** Landowners who wish to participate in the program will be eligible to sell a certain number of development credits. *The more credits a landowner can transfer, the greater compensation he or she can expect to receive.* There are three common ways of establishing this allocation.

1. The first is to allocate credits on a per acre basis related to the underlying zoning. Under this approach, a 10 acre-parcel in a two-acre residential district would be worth 10 acres divided by two acres, or a total of five credits. A limitation of this method is that it treats all properties in the sending area the same. So, for example, a parcel that had steep slopes, ledge, or wetlands and would therefore be more difficult and expensive to develop or might yield fewer buildable lots, would be valued the same for the purpose of allocating credits as a parcel that presented no development constraints.
2. The second option is to tie the number of development credits to the actual number of buildable units per acre by preparing a yield plan. This method involves another layer of complexity and expense, but it does account for development constraints. It does not, however, account for other factors that could also influence the value of one property compared to another – for

#### The Right Ratio

Sending area land and receiving area land often have very different development values. As a result, there can be a discrepancy between the amount for which landowners are willing to sell development rights and the amount for which developers are willing to purchase them. The formula for allocating development credits and additional units should address this. This might mean increasing the number of development credits landowners can sell so that their total value approximates the development value of the land.

On the other side of the transaction, developers need to be able to build enough additional units per development credit to make a TDR development worthwhile. Therefore, a municipality might allow developers to build more than one additional unit per development credit purchased, especially when the units are apartments or townhouses.

This process should keep in mind the how much more development is desired in both the sending and receiving areas.



example, proximity to major roads or parcel size.

3. A third option that seeks to address those factors as well ties the allocation of development credits to the monetary value of the lost development potential. This requires assessing the market value of the buildable lots and adjusting the number of development credits based on the market value.
- **Determine what each development credit will get the developer in the receiving area.** Most programs allow developers to use the credits to “buy” additional residential units above the base zoning. Other programs allow development credits to be used for increases in commercial floor area and for other uses of development rights such as fast-track permitting or residential use by right in commercial zones. Additionally, some programs limit the level of density that can be achieved through development credits by instituting a density cap.
  - **“Grease the gears” of the market transactions.** Some programs leave it up to the landowners and developers to find each other – often assisted by realtors who deal in development credits just as they would deal in real estate. Other programs have mechanisms in place to help the market function more efficiently. The planning office often:
    - a. Facilitates transfer of credits by helping landowners and developers find each other – either on a case by case basis or by keeping an active list of interested buyers and sellers
    - b. Publishes information (and keeps records) about each transaction, most importantly on the selling price of each development credit. This helps to stabilize credit prices.<sup>13</sup>
    - c. Purchases and sells development credits.  
Note: These functions are often organized formally and expanded into a TDR Bank.<sup>14</sup> (see box)
  - **Determine how the value of development credits will be established.** State and municipality Purchase of Development Rights programs have an established process for valuing and purchasing development rights. This same process could be used by municipalities who are purchasing development rights for the TDR program. Private TDR transactions would be ruled by the market.
  - **Provision of conservation easements in the sending area:** After development rights have been transferred from a property in the sending area it is important to have a conservation easement put on the land. Easements restrict the land in perpetuity and make those restrictions enforceable.<sup>15</sup> Some programs require participating landowners to sell *all* of their development rights from their property, others permit landowners to designate a portion of their land that will retain the capacity for development.
  - **Write ordinance.**
  - **Publicize program.** Make sure landowners and developers in the sending and receiving areas are aware they have the option of buying and selling development rights and that they understand how the process works and the steps necessary to participate.

#### **TDR Bank:**

The main purpose of a TDR bank is to purchase and hold development credits for future sales. This enables a property owner to sell development rights when he wishes to – even if there is no developer ready to buy the rights at that time. It also means that a developer who wishes to begin a project in the receiving area but is unable to find a sending area landowner willing to sell development credits can purchase credits already held by the bank. In some instances the TDR bank functions inside a community’s regulatory structure, in other cases a third party such as a land trust can operate the bank.

- **Track transactions.** Keep clear and precise records of each TDR transaction, whether or not it takes place with help from the planning office<sup>16</sup>.
- **Evaluate the program.** Establish benchmarks for achievement and a timeline for review to ensure the program is working efficiently and is effectively working towards the expressed goals.

### **Common Challenges and Missteps in Implementing TDR**

This chart summarizes the common challenges and missteps that have been experienced elsewhere in establishing and implementing TDR programs and which are likely to come up in Rhode Island. It also suggests solutions used in other areas to address challenges and avoid missteps

<b>Common Challenges and Missteps</b>	<b>Suggested solutions – Best practices</b>
<b>Lack of community support</b>	Have a united community vision and understanding of TDR via thorough master planning, education programs, and public participation. <sup>17</sup> TDR programs have been more successful in areas where there is a strong sense of place and the resources to be protected are seen as valuable by the community. <sup>18</sup>
<b>Distrust of the system</b>	Ensure adequate public participation and education about the program. Make sure the program is “fair” for all participants and that the market is transparent and efficient.
<b>Concern about increased density in the receiving area</b>	Educate property owners, businesses, and residents about the benefits of compact mixed use development. The more people are familiar with good examples of contemporary density the more likely they will support dense receiving areas. Organize the receiving area so that the developments that occur on the periphery are similar to existing development patterns – gradually increase the density as you move closer to the center of the receiving area. <sup>19</sup> Make sure the character of the area is maintained through design standards.
<b>Developers have access to increased density through other mechanisms</b>	Do not grant variances or increases in density without the utilization of TDR <sup>20</sup> . Any zoning changes or exceptions requested in the receiving area should require purchase of TDR.
<b>Lack of interest in selling development rights among landowners</b>	Establish a development credit ratio that will enable landowners to recoup enough of their land value. Enable the municipality to purchase development credits or establish a TDR bank. <sup>21</sup>
<b>Lack of interest in buying development credits among developers</b>	When designating the receiving area ensure that a high demand for additional (and compact) growth is present. Allow developers more than one additional unit per development credit. Make the use of TDR easy and fast for developers by limiting the special permit process <sup>22</sup> or allowing the TDR process to satisfy elements of the subdivision approval process or site plan. <sup>23</sup> Make permitting process in receiving area easier or equivalent to permitting process in sending area.
<b>Too complex and burdensome</b>	Simplify and streamline the application requirements for landowners and for participating developers. <sup>24</sup> Make sure that the requirements of the program are straightforward and easy to understand.
<b>Unstable and unpredictable prices</b>	The presence of TDR banks work to stabilize prices by making the transaction information available to the public. A municipality could play the same role by publishing transaction and price information.

#### 4. TDR AS A TOOL FOR RHODE ISLAND

There are some aspects of RI that make TDR a natural fit:

- TDR has been enabled through the legislature: RIGL sec. 45.24.33.
- Because RI has a State Guide Plan the goals of TDR already have official expression and political backing. The possibility of using TDR is mentioned in *Land Use 2025* in “Objectives and Strategies for RI’s Future Land Use”.
- Rhode Island has many rapidly growing areas with a high rate of development and other slow growth rural areas – and therefore a potential demand for TDR.
- Both the state and several municipalities have PDR programs which help to establish the current value for development rights. RI’s state PDR program works mostly with farmland and occasionally with forest land and private owners of unused parcels.
- Statewide Planning has identified several potential growth areas and whether or not they have existing infrastructure
- There are no other predictable ways for developers to get increased density in the state

On the other hand RI does present some unique challenges to the implementation of TDR. Below are listed some of these challenges with suggested solutions and best practices.

- The large, successful TDR programs have occurred in states with county government. Implementation of TDR in Rhode Island will be initiated by individual municipalities – thus somewhat lessening its impact.
- Lack of infrastructure in many communities. TDR will be most useful for those towns whose centers have sufficient infrastructure
- Land fragmentation. Large tracts of land are disappearing in RI. This makes any land conservation strategy more challenging. Many sending area properties will have to enroll in the program before any significant acreage is preserved.
- Current housing demand is for single family detached homes. Educate the public about the benefits of compact, mixed-use developments with visual examples of contemporary projects.
- Overlay limitations. RI statute has enabled the use of overlay districts only for more restrictive uses. The receiving area – which needs *increased* density to function - will have to be a whole new zone and not just an overlay district.

The potential for TDR in Rhode Island has been recognized by many of Rhode Island’s planners, especially in the past few years. Below is a summary of recent activity.

**North Kingstown** – population 26,500 (Census 2000), land area 43.59 square miles

North Kingstown is currently establishing a TDR program. They have identified possible sending areas and receiving areas and are currently involved with a market study on the Post Road corridor to see if there is demand for dense development. The Post Road presents opportunities for revitalization and so they do not foresee resistance from abutters who are anxious to see improvements.

North Kingstown looked into TDR in the past but the program never started. A combination of lack of interest and a concern about density prevented its inception. Now there appears to be significant interest from the farming community and a better understanding of the benefits of dense mixed use centers. There also are plenty of landowners looking to sell their development rights through the town’s PDR program. Lastly, the potential for Quonset Point to become an employment hub might spur demand for mixed use residential on the Post Road.

Many TDR programs do not have enough sellers of development rights at the start of the program (but plenty of interested buyers). In an attempt to prevent this problem North Kingstown has considered allowing developers to buy development rights that the town had previously purchased (before the TDR program started) from landowners. The town would sell these development credits to developers and would use the proceeds of the sale either to preserve more land or to pay off their open space bond.

Several concerns about this strategy have been expressed. Firstly, no *new* land is being preserved. Secondly, unless the money is deposited into a special fund with clear restrictions, there is the possibility for abuse. Thirdly, mistrust of both the development community and the government is prevalent in Rhode Island. Any situation that has the potential to be perceived as a back room deal between developers and the government should be considered carefully. Lastly, the valuation of the development credits might be difficult to establish, given that they might have been originally purchased many years ago when prices were much different.

Snohomish County, WA presents a possible way to ease some of these concerns. They have proposed to purchase development rights during the process of creating their TDR program for the expressed purpose of transferring them to receiving areas once the TDR program begins.<sup>25</sup> This both preserves a stronger connection between land in the sending area and land in the receiving area and is clear intent.

#### Resources:

- Snohomish County, WA is currently in the process of studying and establishing a TDR program. Useful information about this process is available at:  
[http://www1.co.snohomish.wa.us/Departments/PDS/Divisions/LR\\_Planning/Projects\\_Programs/Transfer\\_of\\_development\\_rights.htm](http://www1.co.snohomish.wa.us/Departments/PDS/Divisions/LR_Planning/Projects_Programs/Transfer_of_development_rights.htm)
- Information on design standards for mixed use, compact developments can be found at:  
<http://www.state.nj.us.agriculture/sadc/tdrsummit07melvin.pdf>
- The New Jersey State Agriculture Development Committee's web page on TDR has information about New Jersey's TDR bank and guidelines for establishing TDR:  
<http://www.state.nj.us/agriculture/sadc/tdr.htm>
- The Massachusetts Smart Growth Tool Kit offers helpful information about developing TDR programs:  
[http://www.mass.gov/envir/smart\\_growth\\_toolkit/pages/mod-tdr.htm](http://www.mass.gov/envir/smart_growth_toolkit/pages/mod-tdr.htm)

**Tiverton** – population 15,300 (Census 2000), land area 29.36 square miles

Tiverton is particularly suited to TDR since it has a clear distinction between its rural areas and its more urban areas. Additionally, Tiverton's real estate transfer tax provides them with a source of funding. They are currently in the process of identifying sending and receiving areas. Half of Tiverton is very rural with a lot of agricultural lands – used and unused. It is zoned as r-80. This would make a good **sending area**. The other half, the section above Route 24 is zoned as R-30 (but used to be r-10 and so is dense). This area has sewer and water and plans exist to bring in more sewers and would make a good **receiving area**. They are currently looking into design guidelines and mixed use for this area and trying to figure out the right ratio for development credits – between sending and receiving zones.

#### Aquidneck Island

TDR has been discussed for Portsmouth several times but has never happened.

The report: "Implementing the Aquidneck Island Master Plan: Promoting Growth Centers" mentions the possibility of exploring TDR for Portsmouth. Also, the Aquidneck Island Planning Commission: West Side Master Plan (2005)<sup>26</sup> goes into some specifics on TDR and identifies possible sending and receiving areas.

## APPENDIX A: Examples of TDR program steps

### Steps to create a TDR program:

#### 1. Create a public advisory group:

Stakeholders can include: Watershed groups, farm bureau, builders associations, environmental organizations, developers, private landowners, land trusts, smart growth organizations, state departments of agriculture

*Envision Utah*: [http://www.envisionutah.org/projectsfiles/16/chapter\\_6.pdf](http://www.envisionutah.org/projectsfiles/16/chapter_6.pdf)

Formed a stakeholder committee made up of representatives from diverse interests including citizen committees, public agencies, development interests, business interests, and land owners. Held a series of public workshops, created an online visual preference survey.

*Alpine Township, MI*: 2001- A grant was secured from the Michigan Environmental Council to establish a TDR Citizen Action Committee. This group was composed of Township staff and officials, land developers, realtors, university professors, farmers and general citizens. This diverse partnership was initiated to test the viability and need for a TDR program in Alpine Township from a "bottom up" perspective. The entire process acted as a public information and education campaign, based on a land preservation tool, CommunityViz. <http://www.gvmc-regis.org/news/news11.html>

*Blaine County, CO* <http://www.orton.org/index.cfm?fuseaction=Page.viewPage&pageID=527>

Innovative public outreach, education, participation.

*Franklin, TN*:

"A TDR Task Force was appointed by Mayor Tom Miller in June 2006 and it was tasked to investigate and develop policies and recommendations for a voluntary, incentive-based TDR program for Franklin. The task force operated mostly through three subcommittees, focusing individually on policy, sending areas and receiving areas. The task force consisted of 21 members, including City Aldermen, County Commissioners, Planning Commissioners, developers, non-profit and interested citizens and landowners."

<http://www.franklin-gov.com/pdf/TDR%20TASK%20FORCE%20REPORT%2005%2008%2007.pdf>

**2. Educate the public:** Education programs – possibilities include: hiring a public relations firm, developing a FAQ sheet and supporting materials to disseminate to the public.

*Envision Utah* (see above).

*Collier County, FL*: has a "TDR FAQ" page on their website:

<http://www.colliergov.net/Index.aspx?page=895>,

*Montgomery County, MD* has a user-friendly introduction to TDR, "Plowing New Ground": [http://www.mc-mncppc.org/community/plan\\_areas/rural\\_area/related\\_reports/plowing\\_newground/toc.shtm](http://www.mc-mncppc.org/community/plan_areas/rural_area/related_reports/plowing_newground/toc.shtm),

Their Rural Legacy report is also helpful:

<http://www.dnr.state.md.us/rurallegacy/rlnews/rurallegacy101.html>

*Orange County, NC*: They are in the process of assessing the feasibility of a TDR program and have a website dedicated to keeping the public updated about the process. It includes information about what TDR is, the outcomes of completed studies, information about their task force, timelines.

[http://www.co.orange.nc.us/planning/TDR\\_files/index.html](http://www.co.orange.nc.us/planning/TDR_files/index.html)

They also created a TDR overview brochure for the public:

[http://www.co.orange.nc.us/planning/TDR\\_files/TDR\\_Overview\\_Brochure.pdf](http://www.co.orange.nc.us/planning/TDR_files/TDR_Overview_Brochure.pdf)

*Snohomish County, WA* has an online FAQ bulletin for the

public: <http://www.co.snohomish.wa.us/documents/Departments/PDS/Building/Residential/69tdr1206.pdf>

### 3. Identify potential sending areas:

*Issaquah, WA* prioritizes sending areas lands based on the following criteria: proposed creek side restoration sites and adjacent parcels, property adjoining and including critical area sites (aquifer recharge, shoreline, wetlands, steep slopes) that would decrease development pressure on these critical areas, adjacent to public open space sites, properties that would require a Reasonable Use Variance or Critical Area Variance, properties in King County that are within Issaquah Basin. <http://www.ci.issaquah.wa.us/files/highlights.pdf>

### 5. Identify potential receiving areas:

*Buckingham, PA* has 2 separate receiving areas – one of which is for commercial use only. See: Bowers, D. TDR Programs Seeing Success in Mid-Atlantic. *Farmland Preservation Report*. <http://www.farmlandpreservationreport.com/articles.htm#anchor427233>

*Hatfield, MA* designates their receiving area as all land served by town water and sewer within the Business, Industrial, and Light Industrial zones. See: Pruetz, Rick. Update on Case Studies from Beyond Takings and Givings. Available online: <http://www.beyondtakingsandgivings.com/hatfield.htm>

*The Pinelands'* receiving area is the “regional growth area” – 77,200 acres of existing growth and adjacent lands capable of accommodating growth. <http://www.state.nj.us/dobi/pinelands/pinelandsdensity.pdf>

### 6. Perform a feasibility study:

*Snohomish County, WA* performed a feasibility study in 2002 to assess whether they should move forward with a TDR program. The study was performed by the Planning office and the Department of Public works. Also the Cascade Land Conservancy (CLC) and CIC Valuation Group were contracted for consultant services. This study focused mainly on the supply and demand aspects of TDR.

[http://www.co.snohomish.wa.us/documents/Departments/PDS/GMA\\_Planning/Agriculture\\_Resource\\_Lands/TDR/FinalStudy.pdf](http://www.co.snohomish.wa.us/documents/Departments/PDS/GMA_Planning/Agriculture_Resource_Lands/TDR/FinalStudy.pdf)

*Franklin, TN* gathered a task force to assess the city’s ability to start a TDR program. The task force operated mostly through three subcommittees, focusing individually on policy, sending areas and receiving areas. The task force consisted of 21 members, including City Aldermen, County Commissioners, Planning Commissioners, developers, non-profit and interested citizens and landowners.

<http://www.franklin-gov.com/pdf/TDR%20TASK%20FORCE%20REPORT%2005%2008%2007.pdf>

*Orange County, NC* organized their assessment (conducted by a consultant) of TDR in three phases. Phase I involved an assessment of property values, market analysis, a public engagement plan, a legal assessment, and stakeholder interviews. Phase II assessed the potential sending and receiving areas, the overall economic viability, and the constraints. Phase III concluded with design and implementation recommendations.

[http://www.co.orange.nc.us/planning/TDR\\_files/index.html](http://www.co.orange.nc.us/planning/TDR_files/index.html)

**7. Perform a market study** – Barnstable, MA has hired a consultant (FXM) to do an economic study to determine the valuation process for the development credits. They have also completed a market study of real estate in downtown Hyannis. Many programs combine steps 5, 6, and 7 into one study.

**8. Determine how many development credits each sending area property is allowed to transfer.** In Plymouth, MA landowners submit a preliminary subdivision plan showing # of lots that could be created and an appraisal of the difference between the projected lot sales and the projected infrastructure cost of a theoretical development. Then this difference is divided by the average assessed value of a sending area lot for that year to determine the number of rights available for transfer. See: Pruetz, Rick. Update on Case Studies from Beyond Takings and Givings: <http://www.beyondtakingsandgivings.com/plymouth.htm>



### 9. Determine what each development credit will get the developer in the receiving area.

*Groton, MA:* According to Michelle Collette, Groton town planner, their TDR program allows developers to use purchased development credits to get development permits faster.

Commercial credits:

*Hatfield, MA* awards an additional 2,000 sf of floor area plus an extra 5% increase in lot coverage with each purchase of a development right in a business zone. See: Pruetz, Rick. Update on Case Studies from Beyond Takings and Givings. <http://www.beyondtakingsandgivings.com/hatfield.htm>

Place	TDR allocation	Underlying zoning in sending area	Density bonus allocation
Montgomery County	1 tdr per 5 acres	25 acre	1 tdr gets 1 unit
Calvert County	Ranges from: 1 tdr per 2 acres to 1 tdr per 4 acres	4 acre 20 acre	5 tdrs get 1 unit
Buckingham, PA	1 per 1.17 acre	1.8 acre	
Pinelands	Ranges from: .25 per each 39 acres to 2 per each 39 acres	Wide range	1 tdr gets 4 units (can sell in 1/4 increments)
Warwick, PA	1 per 2 acres		1 tdr gets an increase in 4,000 sq.ft. (comm.)

### 10. Grease the gears of the market transactions.

*Manheim Township, PA* doesn't have a formal bank but has a line item in budget for purchase of development rights<sup>27</sup>.

*The Pinelands* has a bank which has been credited with the success of their program.

<http://www.state.nj.us/dobi/pinelands/pinelandsbank.htm>

*Calvert County, MD* does not have an official bank but the government publishes information about transactions, prices, and has a "purchase and retire" program.<sup>28</sup>

### 12. Conservation Easement. Most programs provide conservation easement templates:

*Snohomish County, WA:*

[http://www.co.snohomish.wa.us/documents/Departments/pds/gma\\_planning/agriculture\\_resource\\_lands/tdr/5aTDRConservationEasement.pdf](http://www.co.snohomish.wa.us/documents/Departments/pds/gma_planning/agriculture_resource_lands/tdr/5aTDRConservationEasement.pdf)

### 16. Evaluate the program.

*The Pinelands, The New Jersey TDR Act:* Mandates that the local planning board review the municipal TDR ordinance and real estate market analysis at the end of the 3 years after ordinance adoption. This review must include an analysis of development potential transactions in both private and public market, an update of current conditions in comparison to the development transfer plan element of the local master plan and capital improvement program, and an assessment of the performance goals of the development transfer program. At year 5, the planning board must undertake a similar review. If after the 5-year review period at least 25% of the development potential has not been transferred, the local TDR ordinance is presumed no longer reasonable as well as any zoning changes adopted as part of the TDR program.

<http://www.nj.gov/dca/osg/docs/tdrrules.pdf>

## Appendix B: Case Studies

## Municipal TDR Programs Massachusetts

### *Groton, MA:*

- Land area: 32.5 square miles. Population: 10,483. Population density: 323/sq mi
- 25 miles North of Worcester, 11 miles South of Nashua, NH (pop 87,000), 39 miles West of Boston
- TDR program since 1980 – has preserved approximately 700 acres
- **Sending and receiving areas:** Works on a case by case basis
  - Allows the town to ensure that each protected parcel is truly worth protecting and gives town oversight on dense development - town requires a special permit for each TDR development
- Town helps landowner and developer find each other but does not take part in the negotiating of price – leaves it up to the market
  - The price has fluctuated over the years – supply and demand
  - Transfer recorded in land records
- Landowners can sell one development credit per 80,000 square feet of protected land
- Originally the developers were allowed one additional unit per development credit purchased - changed to 2 units in 2003
  - Increases in allowed units can only add up to a 10% increase in underlying density
- When the town put a limit on building permits the TDR program began to offer developers the ability to get building permits faster (in 1988). This substantially increased the demand for development credits.
- They have just proposed to make their town center a **receiving area** – it has water and sewer
  - Would allow for a 50% increase in density
  - Hopes that this will increase demand for additional housing units
- Recently, a landowner who had 50 development credits and only wanted to use 25 donated the other 25 to the housing authority for **affordable housing**. The Housing Authority can sell them to a developer or use them on one of their own projects.

*Source: interview with Michelle Collette, town planner for Groton*

### *Plymouth, MA*

- Land area: 96.5 square miles. Population: 51,701 (census 2000). Population density: 536.0/sq mi
- Largest land area of any MA municipality. Last stop on commuter rail from Boston
- Ordinance adopted 2004, 122.6 acres preserved (as of 2006)
- TDR program transfers development rights between sending and receiving sites within its Rural Residential zoning district.
- To determine the number of **development credits** available for transfer from a sending parcel, the owner submits a preliminary subdivision plan showing the number of lots that could be created on the sending site under applicable zoning and subdivision regulations. The owner also submits an appraisal of “FMV” (the difference between the total projected lot sales and the total projected infrastructure cost.) The number of development rights available for transfer is the FMV divided by “AVG” (the average assessed value of an RR lot for the year the application was filed.)
- Prior to TDR use, the property owner must record a conservation easement on the sending site permanently requiring the parcel to be left in its natural state and prohibiting or limiting the construction of any structure.
- **Receiving area:** Must be located in the Rural Residential (RR) zone or Rural Residential Receiving Area (RRRA) zone. In the RR zone, the Planning Board must determine by special permit that the proposed development will contain adequate on- and off-site improvements including recreational areas, roads, sidewalks and amenities. In the RR zone, developments using TDR cannot exceed 150 percent of the residential density otherwise permitted.



*Source: Pruetz, Rick. Update on Case Studies from Beyond Takings and Givings. Available online:*  
<http://www.beyondtakingsandgivings.com/plymouth.htm>  
[http://www.mass.gov/envir/pdfs/sgconf\\_A4\\_massard.pdf](http://www.mass.gov/envir/pdfs/sgconf_A4_massard.pdf)

#### *Hatfield, MA*

- Land area: 9,300 acres. Population: 3,524. Just North of Northampton.
- Ordinance established 2004. No transactions as of yet.
- The Hatfield TDR ordinance is designed to preserve farmland, open space, historic resources and rural character while protecting private property values and encouraging compact development in neighborhoods with public services.
- The **sending areas** consist of all land in the Agricultural, Outlying Residential and Rural Residential zones. Unlike most TDR ordinances, the Hatfield ordinance contains specific procedures for releasing an easement recorded in compliance with the TDR ordinance. When the easement is an Agricultural Preservation restriction, the following two requirements apply.
  - The restriction must be repurchased from the Town by the landowner at present fair market value.
  - Two-thirds of both branches of the Massachusetts general court must vote to determine that the land is no longer suitable for agriculture
- The **receiving areas** consist of all land served by Town water and sewer within the Business, Industrial and Light Industrial zones. Developers apply for a Special Permit with a plan showing the proposed receiving site development with the bonus intensity.
- Special Permit process allows additional commercial/industrial intensity in receiving areas when developers preserve land in the designated sending areas.
  - If the receiving site is in the Business zone, each development credit allows an additional 2,000 sf of floor area above the baseline limit plus an extra five percent increase in lot coverage. Even with TDR, lot coverage cannot exceed 75 percent.
  - Two different bonus formulas are in effect in the Industrial and Light Industrial zones depending on the size of the building site. 1) When the site is less than 30,000 sf, each development right allows an extra two percent increase in allowable building coverage. 2) When the site is 30,000 sf or larger, each development right allows an extra 5,000 sf of floor area but maximum lot coverage cannot exceed 50 percent even with TDR.
- Unlike most TDR programs, the Hatfield program does not give developers the option of purchasing TDRs themselves. Instead, when the number of TDRs needed for approval of a receiving site project is calculated, the developer must pay a **cash contribution in lieu** of TDRs to the Town's Land Preservation Fund to be used by the Hatfield Agricultural Advisory Committee to buy easements in the sending area. Under a Hatfield formula, the average per acre value of a Development Right is the difference between the average per acre assessed value of residentially improved land and the average assessed value of unimproved land according to the most recent Town-wide comprehensive property value assessment. The cash contribution in lieu of each required TDR must be one and one half times the average per acre cost of a development right as determined by the above formula.

*Source: Pruetz, Rick. Update on Case Studies from Beyond Takings and Givings. Available online:*  
<http://www.beyondtakingsandgivings.com/plymouth.htm>

#### *Barnstable, MA:*

- Land area: 64 square miles. Population: 47,821 (50,000 year round/100,000 seasonal). Population density: 796.5/sq mi
- This program is not yet established – still in study phase
- The Cape Cod Commission helped them develop a scope of work for a consultant to complete an economic feasibility analysis based on the current real estate market
- Have hired FXM consultants to do an economic study which will determine the valuation process of the rights to provide the right incentives to developers

- Looking at doing residential to commercial transfers, commercial to commercial and residential to residential – what are the right ratios?
  - **Study will be done by end of summer and will be a public document**
- Have completed a market study for downtown Hyannis and have done a townwide study to look at the impacts of current development
- **Potential Sending areas:** the town has identified “overlay zones”: habitat, water supply, traffic reduction, nitrogen loading. They are thinking of establishing some kind of point system based on the number of overlays each property falls under.
- They have identified their **receiving area:** 447 acres in downtown Hyannis
  - Current downtown infrastructure is underutilized
  - 7 mixed-use zoning districts downtown, developers are constantly seeking density bonuses which they can currently get through development agreements
    - TDR will extract conservation from the developers
    - Looking at ways to have that conservation be targeted
- Haven’t decided on whether or not to do a TDR bank or leave to the free market
- Looking at the possibility of doing traffic credit transfers
  - If they put service requirements or traffic generation limits on developers – then credits could be assigned and transferred
- Also the possibility of air rights transfers - there is a current height limit of 40 feet in downtown Hyannis  
 Source: [http://www.mass.gov/envir/pdfs/sgconf\\_B3\\_daley.pdf](http://www.mass.gov/envir/pdfs/sgconf_B3_daley.pdf) and an interview with Patty Daley, Barnstable’s principle planner

## Pennsylvania

### *Buckingham Township, PA*

- Land Area: 18,488 acres. Population: 16,442 (U.S. Census 2000)
- Development pressures in Bucks County from Philadelphia – 20 miles away
- 422 acres preserved through TDR
- **Sending area** – agricultural district (zoning is 1.8 acres, but can sell TDR at 1.17 acres)
- **Receiving area** – high density districts  
 Source: Bowers, D. 2002. *TDR Programs Seeing Success in Mid-Atlantic*. Farmland Preservation Report. November. <http://www.farmlandpreservationreport.com/articles.htm#anchor427233>

### *Warwick Township, PA*

- Land area: 11 square miles. Population: 12,000. Density: 1,075/ sq mi
- Outside of Philadelphia
- 806 acres preserved 1998-2005
- **Sending area** – agricultural zone. Landowners can sell one development credit per 2 acres of farmland
- The land not transferred is not restricted
- **Receiving area** – campus industrial zone. (no residential)
  - Development credits converted to square footage beyond the lot coverage normally allowed
  - One development credit = an increase in 4,000 sq ft (max. coverage of 70%)
- In 1998 the TDR statute was rewritten and the town put in infrastructure in the receiving area. Also, the Lancaster County Agricultural Preserve Board and the Lancaster Farmland Trust became involved at this time.  
 Source: Bowers, D. 2002. *TDR Programs Seeing Success in Mid-Atlantic*. Farmland Preservation Report. November. <http://www.farmlandpreservationreport.com/articles.htm#anchor427233>

*Seattle, WA.* Seattle's TDR program involves transferring development rights within the downtown area as a way to preserve affordable housing, landmark buildings, and "major open space". Owners of certified lots can sell development credits to commercial high rise developers and use the proceeds for renovating the housing, landmark building, or open space. More information can be found at:

[http://www.mass.gov/envir/smart\\_growth\\_toolkit/pages/CS-tdr-seattle.html](http://www.mass.gov/envir/smart_growth_toolkit/pages/CS-tdr-seattle.html),

<http://www.seattle.gov/housing/incentives/TDRbonus.htm>

<http://www.historicseattle.org/preservationseattle/publicpolicy/defaultjan2.htm>

## **County and Multi-County TDR Programs**

### **New Jersey**

#### *The Pinelands, NJ*

- Land area: 1.1 million acres (largest tract of open space in Mid-Atlantic-portions of 7 counties and all or part of 53 municipalities)
- 47,000 acres preserved
  - During 2005, 689 credits were severed, protecting 5,091 acres of land. A total of 5,879 credits have been severed from 1982 to 2005, protecting 47,651 acres. In 2005, the mean sales price of Pinelands Development Credits (PDCs) was \$30,413 per credit, while the median sales price was \$30,000 per credit.
- Pinelands National Reserve and Pinelands Protection Act of 1979 give the TDR program weight.
- Inter-municipal transfers are allowed - a base allocation of development credits might be assigned to each community within the watershed on the basis of land area and other factors, and then a town that had the capacity and the willingness to accommodate more growth than assigned to it could be designated as a receiving area. (Taintor)
- **Sending areas:** Agricultural production and preservation areas, limited low density residential uses. "Allocations to sending properties range from 0.25 PDCs for each 39 acres of undevelopable wetlands, to two PDCs for each 39 acres of upland farmland or active berry agriculture. Each PDC transfers the right to build four homes and can be bought and sold in 1/4 increments."
- **Receiving areas:** "infrastructure-supported regional growth areas." Municipalities designate areas appropriate for development. They consist of Regional Growth Areas where zoning allows 46,200 more homes to be built using PDCs than would otherwise be permitted. However, since the program is voluntary and not all developers will use PDCs, there are roughly twice as many opportunities to use PDCs as there are PDCs available for use."
- **TDR Bank:** PDCs can be bought and sold privately or through the publicly chartered Pinelands Development Credit Bank (established 1993). While most PDCs are sold to developers, the state began instituting programs in 1999 to buy and retire PDCs, removing them from the market."
  - The PDC bank "is structured so that buyers and sellers negotiate the purchase price of PDCs between themselves" (<http://www.state.nj.us/dobi/proposed/ad062503.pdf>)
  - Buyers may need to contact several sellers to ensure they are getting the best price and sometimes just to get enough PDCs for their project
  - PDC Bank has assisted buyers experiencing difficulty finding sufficient sellers of PDC credits

*Source: Taintor, Rick. 2001. Transfer of Development Rights Report: South County Watersheds Technical Planning Assistance Project. <http://www.dem.nj.gov/programs/bpoladm/susnwsbed/pdfs/tdrreprt.pdf>.*

#### ***EXAMPLE OF A MUNICIPAL ZONING PLAN FOR PDC RECEIVING AREA***

<b>ZONE NAME</b>	<b>USES PERMITTED</b>	<b>BASE RESIDENT. DENSITY*</b>	<b>MAXIMUM RESIDENTIAL DENSITY WITH PDCs</b>
R-1.5	Residential	1 dwelling unit/acre	1.5 dwelling unit/acre
R – 3	Residential	2 dwelling unit/acre	3 dwelling unit/acre
R – 4	Residential	3 dwelling unit/acre	4 dwelling unit/acre

PRD	Planned Residential	4.5 dwelling unit/acre	6 dwelling unit/acre
B-1	Business	n/a	n/a
PC	Planned Commercial	n/a	n/a
LI	Light Industrial	n/a	n/a

\*Machemer and Kaplowitz (pg 787) argue that the Pinelands' receiving areas baseline zoning is too high and does not provide for sufficient demand for TDRs.

(<http://www.state.nj.us/pinelands/infor/fact/PDCfacts.pdf>)

### **EXAMPLES OF RESIDENTIAL DEVELOPMENT PLANS AND PDC USE**

Property Size	Municipal Zone	Max # of homes/lots w/o PDCs	Max. # of homes/lots with PDCs	# of proposed homes/lots	# of residential rights required	# of PDCs required
8 acres	R-1.5	8	12	10	2	1/2
10 acres	R-3	20	30	28	8	2
30 acres	R-4	90	120	120	30	7 1/2
50 acres	R-4	150	200	170	20	5
100 acres	PRD	450	600	570	120	30

(<http://www.state.nj.us/pinelands/infor/fact/PDCfacts.pdf>)

## **Maryland**

### *Montgomery County*

- Land area: 270,000 acres. Population: 922,000. Very dense - just north of DC.
- Established TDR program in 1980. 45,000 acres of farmland preserved, \$63 million in public expenditure saved.
- Established a Rural Transfer Zone (RDT) which covers 1/3 of county (90,000 acres)
  - Downzoned from 5 acre zoning to 25 acre zoning
  - TDR implemented to compensate farmers for loss of value
- Farmers can sell development credits at 5 acre density level
- Landowners can still build 1 house per 25 acres after they transfer rights
- Developers must purchase 1 development credit for every additional unit of housing granted
  - Planners originally wanted to have a direct correlation between receiving area capacity and the number of TDRs from the RDT zone (this correlation fell apart for various reasons)
- County is divided into planning areas
  - Each planning area is responsible for designating receiving areas (some never did however and they accept development rights on a case by case basis)
  - Rural areas and the highest zoning areas are not allowed to accept development credits
  - Each zoning category has an allotted # of maximum development credits allowed
- Potential problems
  - Demand for TDRs is not very strong because there are not enough receiving areas and no one wants density in their neighborhood
  - Planning areas can further limit the amount of development credits allowed - most planning areas specified densities just slightly higher than baseline zoning (designated receiving areas are relatively low density to begin with)
  - Developers must use 2/3 of the maximum # of development credits allowable for each subdivision – this tends to act as a barrier for developers
  - Developers often get this 2/3 requirement waived – not very many development credits are actually used - this has resulted in a lack of increased density in receiving areas
  - Fluctuating TDR price

- No third party broker to act as a TDR bank/ clearinghouse of information on prices and as a result selling price fluctuated over time (lowest in 2000 was \$7,000, highest recently was \$45,000)
- Very successful at preserving land – not at increasing density in town centers  
*Source: McConnell, Virginia, Margaret Walls, and Francis Kelly. 2007. Markets for Preserving Farmland in Maryland: Making TDR Programs Work Better. Prepared for the Maryland Center for Agroecology. HRHCAE Pub 2007-03. February.*

*Calvert County* (from McConnell, Walls, and Kelley. 2007)

- Land Area: 137,700 acres – fastest growing county in MD in the 1990s with a population growth of 45%. Population: 86,474. Population density: 400/sq mi. Close to DC.
- Established TDR program in 1978. 11,652 acres preserved.
- Goal was to protect prime farmlands from development – even though farming value low.
  - Goal of 40,000 acres of preserved land
- Sending areas: Farm Community Districts (FCD), Resource Preservation District (RPD). 1 Development Credit for each acre
- **Receiving areas:** town centers, residential zones, and Rural Community Districts (RCDs)
  - Initially was only negotiated on a case-by-case basis
  - Developers must purchase 5 development credits for each additional unit
  - Use of TDR is “by right” – no special approval required
  - Density bonus is greater in residential and town center areas
  - Still the most demand has been in the RCDs (pg 67)
- No initial downzoning, then in 1999 the entire county was downzoned by 50%
  - Landowners could sell development credits at the pre 1999 rate
  - Downzoned again in 2003 by 50% - see pg 61
    - Now FCD/RPD areas could use TDRs but only to get back to 1999 rate
    - RCDs (now at 20 acre) could use TDRs to get to 1 unit per 4 acres
    - Residential areas (now at 4 acre) could use TDRs to get to 1 unit per 2 acres
    - Land within one mile of town could be developed more densely

<b>Table 1. Zoning and Density Bonus in Calvert County TDR Program</b>				
<i>Zoning Classification</i>	<i>1978-1998</i>		<i>1999 to present</i>	
	<i>Base Density</i>	<i>Density Bonus</i>	<i>Base Density</i>	<i>Density Bonus</i>
Rural				
FC District	1 unit/5 acres	0%	1 unit/10 acres	100%
RP District	1 unit/5 acres	0%	1 unit/10 acres	100%
RuralCommunities	1 unit/5 acres	150%	1 unit/10 acres	400%*
Residential				
R-1	1 unit/acre	300%	1 unit/2 acres	700%
R-2	14 unit/acre	0%	1 unit/2 acres	700%
Town Centers**	4 units/acre	250%	2 units/acre	600%
*Density can go as high as 1 unit/acre within 1 mile of a TC.				
** The Town Center zoning classification came into effect in 1983.				

Source: Virginia McConnell, Elizabeth Kopits and Margaret Walls, *How Well Can Markets for Development Rights Work? Evaluating a Farmland Preservation Program*. (Washington, DC, Resources for the Future, 2003) p. 33.

- Land permanently restricted after first TDR is sold

- County government publishes quarterly newsletter with details on transactions, prices. Also purchases and retires some TDRs - announces at the beginning of the year how much they will pay for TDRs. Price has stabilized significantly since government entered market (pg 66)
  - Affordable housing: If developers are building senior or affordable housing the county will drop the TDR requirement to get a density bonus.
  - Results (pg 67-68)
    - Most preserved land is from FCD/RPD areas – only a few acres from RCD
    - TDRs almost exclusively used in RCDs – not Town Centers or Residential areas
    - Did not prohibit development in FCD/RPD areas but slowed it significantly
    - Recently downzoned – now TDRs are being used more in residential and town center areas and development in the FCD/RPD areas has declined sharply
  - Keys to success
    - Developers can use development credits without a laborious special permitting process
    - Ability of developers to use the RCD for TDR
    - Active role of county government
    - Downzoning created market demand
- Source: McConnell, Virginia, Margaret Walls, and Francis Kelly. 2007. Markets for Preserving Farmland in Maryland: Making TDR Programs Work Better. Prepared for the Maryland Center for Agroecology. HRHCAE Pub 2007-03. February.*

#### Other Resources:

Green Valley Institute. Community Planning Fact Sheet #7: Innovative Planning Techniques Transfer of Development Rights. Available online at:

[http://www.greenvalleyinstitute.org/brochures/fact\\_sheet\\_7\\_transfer\\_of\\_development\\_rights.pdf](http://www.greenvalleyinstitute.org/brochures/fact_sheet_7_transfer_of_development_rights.pdf)

Kopits, E., V. McConnell, and M. Walls. 2005. Making Markets for Development Rights Work: What Determines Demand?. Resources for the Future. Discussion Paper 05-45-REV.

<http://www.rff.org/Documents/RFF-DP-05-45-REV.pdf>

McConnell, V., M. Walls, and E. Kopits. 2006. **Zoning, Transferable Development Rights, and the Density of Development:** Resources for the Future Discussion Paper 05-32 REV. Available online at:

<http://www.rff.org/Documents/RFF-DP-05-32-rev.pdf>

New Jersey Pinelands

<http://www.state.nj.us/dobi/proposed/ad062503.pdf>

<http://www.state.nj.us/pinelands/infor/fact/PDCfacts.pdf>

New York: Pine Barrens Credit Program -

[http://pb.state.ny.us/pbc/pbc\\_overview.pdf](http://pb.state.ny.us/pbc/pbc_overview.pdf)

[http://pb.state.ny.us/chart\\_pbc\\_main\\_page.htm](http://pb.state.ny.us/chart_pbc_main_page.htm)

American Farmland Trust: Farmland Protection Toolbox

[http://www.farmlandinfo.org/documents/27761/FS\\_Toolbox\\_10-02.pdf](http://www.farmlandinfo.org/documents/27761/FS_Toolbox_10-02.pdf)

Barnstable, MA: <http://www.town.barnstable.ma.us/>

Buckingham Township, PA: <http://www.buckinghampa.org/>

Hatfield, MA: <http://www.townofhatfield.org/About%20the%20Town/demographics.htm>

Plymouth, MA: [http://www.plymouth-ma.gov/Public\\_Documents/index](http://www.plymouth-ma.gov/Public_Documents/index)

## END NOTES

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<sup>1</sup> Chung, Hyung C., Bruce Hoben, Glenn Chalder, and Richard Eigen. 1999. The Costs of Suburban Sprawl and Urban Decay in Rhode Island. *Grow Smart Rhode Island*. December. Pg 4-11, 4-12.

<sup>2</sup> Roney, Maya. 2007. Green Acres: Farmland is more expensive than ever before thanks to a hunger for ethanol and simpler living. *Business Week*. April 11. Accessed online: [http://www.businessweek.com/bwdaily/dnflash/content/apr2007/db20070411\\_595520.htm](http://www.businessweek.com/bwdaily/dnflash/content/apr2007/db20070411_595520.htm)

<sup>3</sup> McConnell, Virginia, Margaret Walls, and Francis Kelly. 2007. Markets for Preserving Farmland in Maryland: Making TDR Programs Work Better. Prepared for the Maryland Center for Agroecology. HRHCAE Pub 2007-03. February. Pg 157.

<sup>4</sup> McConnell, Walls, and Kelly. 2007. pg viii

<sup>5</sup> Machemer and Kaplowitz pg 787-788.

<sup>6</sup> Millar, Scott. 2007. Personal communication

<sup>7</sup> Taintor, Rick. 2001. Transfer of Development Rights Report: South County Watersheds Technical Planning Assistance Project. <http://www.dem.ri.gov/programs/bpoladm/suswshed/pdfs/tdrreprt.pdf>. pg 11

<sup>8</sup> Millar, Scott. 2007. Personal communication

<sup>9</sup> Machemer and Kaplowitz. 2002. pg 786. McConnell, Walls, and Kelly, pg 158.

<sup>10</sup> Delaware Valley Regional Planning Commission. 2004. Municipal Implementation Tool #8: Transfer of Development Rights. August. Available online at: <http://www.dvrpc.org/planning/community/MCDtools/pdf/tool08.pdf>, The Massachusetts Smart Growth Toolkit TDR Bylaw, available online at [http://www.mass.gov/envir/smart\\_growth\\_toolkit/bylaws/TDR-Bylaw.pdf](http://www.mass.gov/envir/smart_growth_toolkit/bylaws/TDR-Bylaw.pdf)

<sup>11</sup> Machemer and Kaplowitz 2002. pg 788.

<sup>12</sup> Machemer and Kaplowitz. 2002. pg 786.

<sup>13</sup> McConnell, Walls, and Kelly. 2007. pg 159

<sup>14</sup> Machemer and Kaplowitz. 2002. pg 789. and McConnell, Walls, and Kelly. 2007. pg 159

<sup>15</sup> Bredin, J. 2000. Transfer of Development Rights: Cases, Statutes, Examples, and a Model. *Proceedings from the 2000 APA National Planning Conference*. Available at <http://www.design.asu.edu/apa/proceedings00/BREDIN/bredin.htm>

<sup>16</sup> McConnell, Walls, and Kelly. 2007. pg 63-64

<sup>17</sup> EPA. 2001. Transferable Development Rights: Using Market Forces and Master Planning to Manage Growth and Environmental Quality. Available online at: <http://www.epa.gov/Region1/ra/sprawl/tdr2.pdf>

<sup>18</sup> Machemer and Kaplowitz. 2002. pg 785.

<sup>19</sup> MacDonald, Joe. 2007. Big TDR Innovations from Small Places. *APA 2007 Conference Session Brief*. <http://www.planning.org/conferencecoverage/2007/tuesday/bigtdr.htm>

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- <sup>20</sup> Machemer and Kaplowitz. 2002. pg 784, Pruetz and Pruetz. 2007. pg 4
- <sup>21</sup> Machemer and Kaplowitz. 2002. pg 783
- <sup>22</sup> McConnell, Walls, and Kelly. 2007. pg viii
- <sup>23</sup> The Massachusetts Smart Growth Toolkit TDR Bylaw, available online at [http://www.mass.gov/envir/smart\\_growth\\_toolkit/bylaws/TDR-Bylaw.pdf](http://www.mass.gov/envir/smart_growth_toolkit/bylaws/TDR-Bylaw.pdf)
- <sup>24</sup> Machemer and Kaplowitz. 2002. pg 791
- <sup>25</sup> Snohomish County. 2002 TDR Pilot Program Feasibility Study. [http://www.co.snohomish.wa.us/documents/Departments/PDS/GMA\\_Planning/Agriculture\\_Resource\\_Lands/TDR/FinalStudy.pdf](http://www.co.snohomish.wa.us/documents/Departments/PDS/GMA_Planning/Agriculture_Resource_Lands/TDR/FinalStudy.pdf)
- <sup>26</sup> Aquidneck Island Planning Commission: West Side Master Plan – prepared by the Cecil Group, Pare Engineering Corporation, SMWM, Edwards and Kelcey, Bonz and Company, Ninigret Parnters November 2005: <http://www.aquidneckplanning.org/westsidemast.html>
- <sup>27</sup> Machemer and Kaplowitz pg 789
- <sup>28</sup> McConnell, Walls, and Kelly, pg 63-64, 66



# Appendix C

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## Municipal Leaders Meetings Summary



## APPENDIX C – MUNICIPAL LEADERS MEETINGS SUMMARY

### Introduction and Background

With support from funds through a Rhode Island Statewide Planning Program Planning Challenge Grant, the Washington County Regional Planning Council (WCRPC) implemented the Washington County Transfer of Development Rights (TDR) Study, which crafted an approach to educate local councils, boards, and commissions about TDR and its applicability in Washington County to curb suburban sprawl, protect important landscapes, and revitalize village centers. While many local Washington County communities identify TDR as a potentially effective regulatory strategy in their comprehensive plans, only two have taken steps to implement TDR programs.

WCRPC contracted with Horsley Witten Group, Inc. (HW) to complete the study. It involved research of TDR models across the country and assessed their applicability to Washington County and the State as a whole. Preservation and growth models were also investigated to see if there were stellar examples of each that could be combined to customize a TDR program for Washington County communities. These programs were compared to local and state legislation, policies, and regulations to determine compatibility or potential obstacles to implementation. Through this process, WCRPC and HW developed a so-called “TDR 101” presentation, which was presented at town council meetings to explain concepts, benefits, and challenges to putting a TDR program into practice. The findings and conclusions of this work will be published in the Study’s final report submitted to the Statewide Planning Program.

As part of the TDR Study, the concept of an inter-municipal TDR program was also explored. To gain insight into the opportunities and challenges associated with this type of program, WCRPC and HW met with municipal leaders in the urban and suburban ring associated with the Providence metropolitan region. To help frame the idea of inter-municipal TDR, WCRPC and HW first discussed the concept of “growth centers.” In the national research associated with the study, the concept of a growth center or something similar was used in other states as a means to focus and promote growth in specific areas, some in association with a TDR program, some not.

Growth centers are also an important land use approach in *Land Use 2025* and, in 2002, a growth center program was developed in association with Governor Almond’s Growth Planning Council. The Council has since been dismantled but the designation of growth centers is still a voluntary option to communities by amending their local comprehensive plans. There are currently no incentives associated with designation, but some communities have done so as a strategy to guide local growth as well as in the anticipation that benefits may be offered some time in the future.

Small group meetings were held with three to four local planning officials to discuss the concept of growth centers, first as a technique within their community and second as a potential vehicle for inter-municipal TDR applied statewide. The benefits and challenges of this latter type of program in Rhode Island were evaluated with the leaders. In 2011, the Statewide Planning Program applied for funding from the US Department of Housing and Urban Development through its Sustainable Communities Initiative to, among other activities, delineate boundaries of growth centers identified in *Land Use 2025* in collaboration with local communities. They were

also looking to reinvigorate their growth centers program by developing incentives that will entice communities to participate. The municipal leader interviews performed by WCRPC and HW were specifically designed to explore these issues of incentives and get the “local perspective” on how an effective growth center program might be designed.

### **Municipal Leaders Meetings**

The objective of municipal leaders meetings was to collect information on three topics: 1) implementing in a local TDR program; 2) needed incentives and the benefits and challenges of participating in an inter-municipal TDR program; and 3) needed incentives for in a statewide growth center program. Three municipal leaders meetings took place:

- Meeting #1: Cranston, Johnston (host), and Smithfield
- Meeting #2: East Greenwich (host), Warwick, and West Warwick
- Meeting #3: Central Falls, East Providence, Pawtucket (host), and Woonsocket

The following questions helped to focus the discussion:

- Have you considered TDR or elements of TDR? Why or why not?
- Where you would like growth to happen?
- What type of growth would you like to see?
- Do you see the benefits of accepting growth from other parts of the state? Why or why not?
- What types of incentives would allow you to accept growth from other parts of the state?
- What obstacles locally or statewide do you see that would not allow you to accept growth?
- Have you considered establishing a growth center through the state’s program? Why or why not?

Each community had its own unique characteristics and circumstances related to growth and how it planned for future development; however, there were similarities associated with obstacles to an inter-municipal program. These primarily revolved around municipal costs associated with housing, the state’s struggling economy and lack of local economic development interest and opportunities.

### **Transfer of Development Rights**

Three of the ten communities involved in the municipal leaders meetings identify TDR in their comprehensive plans, Cranston, East Greenwich, and Smithfield. These are the more suburban-fringe areas that have less developed areas that abut rural communities. For these communities, TDR is referenced as a land use technique to explore and some communities have identified potential receiving areas, both existing centers and new areas of development. During the discussion, all communities favored the idea of a local, municipal TDR program.

On the reverse side, all municipal leaders felt it would be a challenge to convince their local councils to accept growth from other areas of the state, even with incentives. Of particular

concern was the issue of housing and municipal costs related to added school children. Further, accepting additional housing may be related to affordable housing units as they are defined by the State's affordable housing mandate. This raised concerns not only with the added costs to provide needed social services to lower-income populations, but also with the equitable distribution of affordable housing throughout the state.

Acceptance of development rights to leverage higher density of commercial and/or industrial types of uses might be more plausible after extensive education of local councils and decision makers on the benefits to a receiving community. However, it does not appear likely that a community would send away an opportunity to build its local tax base and relieve some of the residential tax burden, a primary goal in most comprehensive plans. Therefore, this scenario would most likely work by sending the development rights for housing in Sending Communities to commercial/industrial areas in Receiving Communities. This issue would need further exploration.

## **Growth Centers**

Growth was discussed in two ways. First, municipal leaders were asked *where* they would like to see future growth in their communities. Second, they were asked *what types of incentives* would entice them to participate in the State's growth center program.

### Future Growth Locations

Focusing growth in targeted areas supports *Land Use 2025* and the growth centers model. Municipal leaders identified these areas in their local comprehensive plans and are at various stages of implementation. Communities also vary in the complexity of implementation. As expected, several municipal leaders are focusing growth in existing developed areas including neighborhoods and villages and promoting mixed use infill and redevelopment. However, there was a significant variety in the locations of desired growth and the type of growth based on unique conditions in each municipality. For example, East Providence has adopted a Waterfront District which offers flexibility in density and land use and encourages mixed-use development. There is a state-appointed board to review proposals in this specific district and a Tax Increment Finance (TIF) District has been established to assist in leveraging funds for infrastructure improvements, including a new roadway and installation of city water and sewer to service. Other specific initiatives include:

- Warwick looks to capitalize on the new Massachusetts Bay Transit Authority (MBTA) train station and skywalk that connects to TF Green Airport. Transit-oriented development is proposed through a new master plan study. The City is revising its local zoning to accommodate envisioned development and offer incentives to developers.
- Pawtucket faces redevelopment issues that revolve around environmental clean-up. In their waterfront and downtown areas, historic uses require the City to address brownfields constraints to make parcels more desirable for private investment.

- Communities like East Greenwich, West Warwick, Smithfield, Johnston, and Cranston are all looking to revitalize existing villages and neighborhoods. Much of this is through infill and rehabilitation of existing structures. These communities also are evaluating their local zoning to allow for mixed use development, design standards, and incentives.
- East Greenwich is faced with accommodating a new institutional use in an area already facing traffic congestion challenges.

Table 1 below summarizes where the communities participating in the focus groups are concentrating efforts related to growth and redevelopment. Common challenges to attract new projects among all municipalities stem from local economic conditions. The struggling housing market, stringent lending practices, and other drivers of local economic investment have stalled projects, ended projects, or resulted in overall lack of developer interest.

**Table 1. Local Growth Areas Identified by Municipal Leaders**

<b>Growth Area</b>	<b>Municipality</b>	<b>Type</b>
Central Falls	Central Falls	City Wide
Elmwood Avenue/ Wellington Avenue	Cranston	Economic Development/ Mixed Use
Phenix Avenue/Natick Avenue	Cranston	New Growth Center
Knightsville	Cranston	Neighborhood
Pippin Orchard Road/Scituate Avenue	Cranston	New Growth Center
NEIT Campus	East Greenwich	Institution
Hill and Harbor District	East Greenwich	Town Center/Main Street
Waterfront	East Providence	District
Thornton	Johnston	Neighborhood
Manton	Johnston	Neighborhood
Downtown	Pawtucket	Downtown
Waterfront	Pawtucket	Neighborhood
Fidelity Campus	Smithfield	Economic Development
Esmond	Smithfield	Village Center
Greenville	Smithfield	Village Center
Pontiac Mills	Warwick	Mill Redevelopment
TF Green Airport Train Station	Warwick	Transit-Oriented Development
Apponaug	Warwick	Village
Conimicut	Warwick	Neighborhood
Phenix	West Warwick	Village Center
Arctic	West Warwick	Village Center
Natick	West Warwick	Village Center
Industrial Park	Woonsocket	Economic Development

## Growth Center Incentives

Municipal leaders discussed incentives that would make participation in the growth center program desirable. In general, municipal leaders felt that definitions and parameters regarding what could be identified as a growth center should be broad and the State should bear in mind the diverse conditions of rural, suburban, and urban communities. The potential incentive of added density was considered a low priority, even within municipalities, particularly for urban communities. Urban areas either felt that some local growth areas already offered density incentives to developers, and in other areas of their cities they were focused on reducing density.

The following incentives were strongly recommended as attractive options for individual municipalities:

- Monetary assistance or seed money to invest in revolving loan programs that can be put toward commercial building façade improvements or other building maintenance issues;
- Technical and monetary assistance to municipalities for infrastructure improvements, including upgrades and extensions of water, sewer, and fiber optic systems;
- Streamlined state-level permitting;
- The revitalization of programs like the Enterprise Zone, the Historic Tax Credit, and any other vehicles that allow for the award of tax credits;
- Design and construction assistance to municipalities for streetscape improvements;
- State-led promotion of growth centers as areas for economic development through effective “clearinghouse” style information sharing and other marketing techniques;
- Strong regional transportation planning and implementation to link growth centers with ongoing efforts associated with the MBTA, TF Green Airport, and Rhode Island Public Transit Authority (RIPTA);
- Technical assistance to municipalities for more complex redevelopment initiatives such as those association with creating TIF Districts or coordinating and financing environmental clean-up (brownfields); and
- Overall technical assistance to municipalities on development/redevelopment projects in the anticipation that staffing will be cut due to local budget constraints.

## **Conclusion**

Communities see the benefits of TDR and are open to establishing local programs; however, an inter-municipal or state-wide program seems more challenging to local practitioners. Exploration on this issue will need to focus on the types of development rights that will be “transferred” and the types and diversity of development it would create. Municipal leaders asked questions about the type of development being sent, if it is residential, commercial, or



industrial, and the benefits that could be offered. Receiving residential growth was the greatest obstacle. While many felt that it would be difficult to convince local decision makers to accept growth from elsewhere in the state, asking them to accept additional residential development would receive the greatest resistance. Extensive outreach and education on the benefits of TDR would be needed and the incentives would have to cover all anticipated costs associated with particular types of development.

Overall, communities were receptive to participating in a revised growth center program that offered monetary incentives and technical assistance and the development of a robust program appears to be the best way to start the discussion on inter-municipal TDR. Both urban and suburban municipalities agreed that incentives would need to focus on improvements to local infrastructure, including water and sewer upgrades and extensions, as well as streetscape improvements. Incentives in the form of technical assistance would also help communities with more complex redevelopment strategies or with limited staffing.

# Appendix D

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Summary of Regulatory Model Assessment  
Draft Enabling Legislation



## APPENDIX D - SUMMARY OF REGULATORY MODEL ASSESSMENT

### I. TRANSFER OF DEVELOPMENT RIGHTS PROGRAMS

Location	Enabling Legislation/Key Plans	Important Elements
Montgomery County, Maryland	<a href="#">Article 66B § 11:01</a> of the Maryland Code	<ul style="list-style-type: none"> <li>• <b>Transfer Development Right (TDR) Program</b> goal is focused on farmland preservation.</li> <li>• A TDR Bank was called for when the program was established, but was never implemented.</li> <li>• TDR market is operated solely through independent real estate agents.</li> <li>• Property in sending areas may retain the right to build at an existing 25-acre density, while transferring the balance of development rights achieved at a 5-acre density ratio.</li> <li>• A clear administrative process facilitates approval of TDR calculation.</li> <li>• An insufficient number of receiving areas, a 20% requirement for LMI units and detailed development standards make TDRs less attractive.</li> <li>• TDR program is rooted in early efforts creating a rural zone at a five-acre minimum and the subsequent down-zoning to one unit per 25 acres.</li> </ul>
King County, Washington	The Growth Management Act <a href="http://www.kingcounty.gov/property/permits/codes/growth/GMPC.aspx">http://www.kingcounty.gov/property/permits/codes/growth/GMPC.aspx</a> Chapter 21A.37 Washington General Laws General Provisions - Transfer Of Development Rights (TDR)	<ul style="list-style-type: none"> <li>• The purpose of the <b>TDR Program</b> is the protection of both rural and “urban separator” lands from suburban sprawl. Urban separator lands are defined as low-density areas within the urban growth boundary that include open space corridors and greenbelts.</li> <li>• County funds used to purchase development rights in the rural, agricultural and forest production districts. The TDRs are then banked for later sale and use in urban receiving areas.</li> <li>• Private market for TDRs operated by real estate agencies is also active. Arrangements between the County and a municipality are in place to accept higher density developments with TDRs. The agreements may offer the municipalities some compensation for infrastructure improvements, acquisition, design or construction of public facilities, transit and streetscape improvements.</li> <li>• TDR Program works together with other planning tools to moderate growth and build capacity.</li> <li>• Cuts in funding for compensation to municipalities, a “full” TDR Bank, and tensions between the County and municipalities, have all led to a less robust TDR market in the last several years.</li> </ul>

Location	Enabling Legislation/Key Plans	Important Elements
		<ul style="list-style-type: none"> <li>In 1994, King County adopted a Comprehensive Plan that delineated an urban growth boundary, urban separator zone, rural land area and resource zone as part of implementation of Washington’s 1990 Growth Management Act. Establishment of zoning districts followed.</li> </ul>
Boulder County, Colorado	Planned Unit Development Act of 1972 <a href="http://www.lpdirect.net/casb/crs/24-67-101.html">http://www.lpdirect.net/casb/crs/24-67-101.html</a>	<ul style="list-style-type: none"> <li>Program goals include the preservation of agriculture, rural open space and character, scenic vistas, natural features and environmental resources.</li> <li>Boulder’s program does not employ a TDR Bank but uses a “clearinghouse” and “market place” to facilitate transactions (<a href="http://www.bouldercounty.org/live/property/pages/tdcmarketplace.aspx">http://www.bouldercounty.org/live/property/pages/tdcmarketplace.aspx</a>).</li> <li>Transactions are generally used to allow for larger homes (over 6,000 square feet)</li> <li>Market for Transferable Development Credits (TDCs) has been dominated by inter-governmental agreements. Fifteen transfers (from 1989 to 2000) represent 265 units on approximately 470 acres of land. Average TDC price \$50,000.</li> <li>This TDR program has had several successes. <ul style="list-style-type: none"> <li>Inter-governmental agreements have increased the credibility of TDRs with developers and the public.</li> <li>The eligibility criteria for sending areas have made TDR a preferred option for rural development.</li> <li>There continues to be a market for TDR receiving site development.</li> <li>Receiving site criteria allow developers significant latitude in site design and density.</li> <li>The public has become more comfortable with TDR as a growth management and preservation tool leading to a reduction in opposition to proposals.</li> </ul> </li> <li>The development community considers the process time consuming which has led to guarded use of the program.</li> <li>Boulder County has form of cluster subdivision that allowed a density bonus when at least 75% of a parcel is preserved under a conservation easement. In 1989, it expanded that program to allow the ‘transfer’ of that density increase to a non-contiguous parcel providing additional incentives for the transfer. The Boulder Valley TDC program went further and identified sending sites, defined the number of TDCs that could be transferred and established criteria for receiving sites.</li> </ul>
Tahoe Regional Planning Agency	Bi-State Compact – US Congress 1980; P.L. 96-551.	<ul style="list-style-type: none"> <li>The <b>Tahoe Agency Transfer Program</b> has one very specific goal – protect water quality and preserve Lake Tahoe.</li> <li>The Tahoe Transfer Program does not rely on a TDR Bank.</li> </ul>

Location	Enabling Legislation/Key Plans	Important Elements
(California/ Nevada)		<ul style="list-style-type: none"> <li>Land area coverage transfers are handled through private transactions. Allocations and TDRs are managed by local governments.</li> <li>The demand to build in the Lake Tahoe area remains high, requiring no municipal incentive for development.</li> <li>A single project for development is required to obtain land coverage, allocation and TDRs to initiate a development proposal. Layers of approval by local governments add to the process and discourage development.</li> <li>Tahoe Regional Planning Agency (TRPA) adopted their regional plan in 1986. It includes regulation of land use, density, growth rates, excavation and land coverage. Limits to land coverage are an essential part of the plan to protect water quality and control storm-water runoff. Land coverage regulation can limit both the development of vacant land and redevelopment. In 1987, TRPA adopted four transfer mechanisms designed to preserve the Lake Tahoe Basin. (1) land coverage transfer program (2) allocations (3) TDRs from vacant land; and (4) TDRs from existing development.</li> </ul>
Pinelands, New Jersey	<p>State Law Provisions N.J.S.A. 40:55D-137 <i>et seq</i> 1. State Transfer of Development Rights Act. <a href="http://www.nj.gov/state/planning/tdr.html">http://www.nj.gov/state/planning/tdr.html</a></p> <p>Pinelands Protection Act 1979 <a href="http://www.state.nj.us/pinelands/images/pdf/%20files/pinelandsprotectionact1.pdf">http://www.state.nj.us/pinelands/images/pdf/%20files/pinelandsprotectionact1.pdf</a></p>	<ul style="list-style-type: none"> <li>The purpose of the <b>Pinelands Development Credits Program</b> is to redirect growth from the preservation and agricultural districts to infrastructure-supported regional growth areas.</li> <li>PDCs can be bought and sold privately or through the Pinelands Development Credit Bank which was publically chartered in 1987 and capitalized with \$5 million dollars.</li> <li>In 1999, the State of New Jersey began to buy and retire PDCs, removing them from the market.</li> <li>New rules in 1994 provide more flexibility to municipalities in their growth management effort, the development review process was streamlined.</li> <li>The program is voluntary and not all developers use PDCs. There is a large surplus of PDCs. The creation and use of credits requires Commission review of development plans as well as local approval.</li> <li>Pinelands PDC program has its roots in the “National Parks and Recreation Act of 1978” which established the Pinelands National Reserve and called for preparation of a Comprehensive Management Plan for the Pinelands.</li> </ul>
Livermore, California;	Not authorized by legislation. TDC in California is a function of a local government’s police power.	<ul style="list-style-type: none"> <li>The Goal of the <b>Transfer of Development Credits (TDC) program</b> is the preservation of agricultural land and open space.</li> <li>The City of Livermore has a revolving fund in which the City purchases and resells TDCs.</li> </ul>

Location	Enabling Legislation/Key Plans	Important Elements
		<ul style="list-style-type: none"> <li>TDCs may be sold or purchased or otherwise transferred by any person or entity including the City and other governmental entities.</li> <li>The TDC program offers a density bonus to receiving area sites for the use of TDC and dwelling units which utilize TDC are given a priority allocation under the building permit cap.</li> <li>Use of TDC is an option in receiving areas but the increase in density that it allows is an incentive. To exceed baseline density in a TDC receiving zone, a land owner may also opt to make a payment-in-lieu of purchase and retiring TDCs. The TDC in lieu fee is reviewed bi-annually. Fees are used for the City's acquisition of TDCs from North Livermore and to offset administration costs of the program.</li> <li>The North Livermore Urban Growth Boundary Initiative (initiative) and the City of Livermore 2003-2025 General Plan was the basis for Livermore's TDC ordinance adopted in 2004.</li> </ul>
Warwick, New York	N.Y. Gen. City Law §20-f N.Y. Town Law §261-a N.Y. Village Law §7-701	<ul style="list-style-type: none"> <li>The <b>Transfer of Development Rights Program's</b> goal is to preserve open space, historic features and critical environmental areas as well as farmland.</li> <li>There is no TDR Bank.</li> <li>Warwick's program relies on contributions to an Incentive Trust Account in exchange for an increase in density when annexed property is developed. The account is then used to preserve open space either through the purchase of development rights or fee title.</li> <li>This program relies on intra-municipal agreements and shared services.</li> <li>A policy of 1999 Comprehensive Plan, a density transfer program was created to steer growth toward the Village of Warwick which has the infrastructure needed to support additional development. A TDR zoning regulation followed.</li> <li>The sending area for TDR is the Agricultural Protection Overlay District created to preserve large parcels of productive agricultural land.</li> </ul>
Sarasota County, Florida	Florida Title XI Chapter 163.3177	<ul style="list-style-type: none"> <li>The <b>Transfer of Development Rights Program's</b> goal is preserving agricultural lands, environmentally sensitive lands, and open space and channeling future building to mixed use, compact development.</li> <li>There is no TDR Bank.</li> <li>This program has an overlap in sending and receiving areas in Village and Hamlet districts which allows the transfer of TDR with an increase from one dwelling unit (du)/five acres to three du/acre in the same geographical area.</li> <li>The demand for additional density in the Village areas relative to the supply of TDR is an issue of concern. Will the market be imbalanced?</li> </ul>



Location	Enabling Legislation/Key Plans	Important Elements
		<ul style="list-style-type: none"> <li>Sarasota's first TDR program began in 1982 to prevent the development of small suburban lots. It was replaced in the 1990's by a program intended to preserve conservation land. In 2001, a new Comprehensive Plan was passed called "Sarasota 2050" based on growth protections and a residential build-out analysis. The Plan concluded that even with the full use of property within the existing and future urban service area the County would reach residential build-out by 2016. Concern over development of environmentally sensitive lands in the rural fringe zones led to the adoption of a modern TDR program in 2004.</li> </ul>
Gunnison County, Colorado	Planned Unit Development Act of 1972 <a href="http://www.lpdirect.net/casb/crs/24-67-101.html">http://www.lpdirect.net/casb/crs/24-67-101.html</a>	<ul style="list-style-type: none"> <li><b>Residential Density Transfer (RDT) Program</b> is a "TDR-less" TDR approach.</li> <li>It offers developers, as an incentive, the option to reduce the on-site open space requirement from 30% to 15% of the total project area at the receiving end, which expands the usable area of the site and increases the number of allowable lots.</li> <li>To calculate the RDT payment, the County Assessor values the site before and after the approval of the proposed subdivision, using its standard mass appraisal method, rather than third party appraisers. The RDT payment is 10% of the increased land value.</li> <li>Sending and receiving areas are not designated; therefore, the County reviews land-preservation proposals by landowners and decides which have the most significant resources and meet local conservation goals and objectives.</li> <li>The County can target RDT revenue throughout the region.</li> </ul>

## II. PRESERVATION FUNDING AND INCENTIVES

Location	Enabling Legislation/Key Plans	Important Elements
Old Tappan, New Jersey	<a href="http://oldtappan.net/open_space.cfm">http://oldtappan.net/open_space.cfm</a> Part I, Chapter 53 <a href="http://www.ecode360.com/?custId=OL1906">http://www.ecode360.com/?custId=OL1906</a>	<ul style="list-style-type: none"> <li>• <b>Open Space Trust Fund</b> was established by referendum in 1999.</li> <li>• Residents pay a local property tax in the amount of \$0.01 per \$100 of assessed value for a period of five years.</li> <li>• Tax yields approximately \$118,000 per year.</li> <li>• Fund is designated for the purchase of open space to preserve land as open space and to keep it in its natural state.</li> <li>• If no open space is available for purchase, then the funds are used for other recreation, conservation, farmland preservation or historic preservation purposes as permitted by law, to be determined following a public hearing.</li> <li>• Open Space Advisory Committee makes recommendations to Mayor and Council for use of funds.</li> </ul>
Douglas County, Colorado	<a href="http://www.douglas.co.us/openspace/">http://www.douglas.co.us/openspace/</a> <a href="#">Colorado Revised Statutes</a> <b>Title 30</b> Government – County <b>Article II</b> County Powers & Functions <b>Part 1</b> General Provisions <a href="#">30-11-122 Conservation Trust Fund Authorized</a>	<ul style="list-style-type: none"> <li>• <b>Douglas County Open Space Program</b> administered by the DC Division of Open Space and Natural Resources.</li> <li>• Created in 1994 (Resolution 93-174).</li> <li>• Sixth-of-a-cent sales and use tax.</li> <li>• Focused considerable effort on land acquisition, protecting 46,220 acres of open space land in the County (July 2011): 30,878 ac, conservation easements; 13,395 ac, owned by DC; and 1,947 ac, owned by others (municipal, state or other agencies) <ul style="list-style-type: none"> <li>○ Total Property Costs \$162,904,221</li> <li>○ Partner Contributions \$102,460,454 (\$1.70 for every \$1 spent by funds)</li> <li>○ County Contributions \$60,443,767</li> </ul> </li> <li>• Douglas County has purchased land at today's prices, however much of the program's revenue stream is committed to bond payments.</li> <li>• Future land acquisition will require additional funding sources.</li> </ul>
Boulder County (BC), Colorado	<a href="http://www.bouldercounty.org/live/environment/land/pages/acquisitions.aspx">http://www.bouldercounty.org/live/environment/land/pages/acquisitions.aspx</a> <a href="#">Colorado Revised Statutes</a> <b>Title 30</b> Government – County <b>Article II</b> County Powers & Functions <b>Part 1</b> General Provisions	<ul style="list-style-type: none"> <li>• <b>Conservation Trust Fund</b> is administered by the BC Parks and Open Space Department, Real Estate Division.</li> <li>• The Parks and Open Space Advisory Committee (POSAC) reviews proposals and advises the Boulder County Planning Commission, the County Commissioners and staff on issues concerning open space, county land acquisitions and maintenance.</li> <li>• Four on-going sales taxes that are a result of six voter-approved sales tax resolutions (1993-2010) acquire funds for open space protection and acquisition through 2030.</li> </ul>

Location	Enabling Legislation/Key Plans	Important Elements
	<a href="#"><u>30-11-122 Conservation Trust Fund Authorized</u></a>	<ul style="list-style-type: none"> <li>• Uses funds to purchase property, pay off bonds, fund programs that preserve habitat, provide educational and recreation programs, create and maintain trails</li> <li>• Open space acquisition is also supported through property tax funds, subject to annual appropriations by County Commissioners, state lottery fund, and grants.</li> </ul>
San Juan County, Washington	<a href="http://www.co.san-juan.wa.us/treasurer/landbank.aspx">http://www.co.san-juan.wa.us/treasurer/landbank.aspx</a> <a href="http://www.sjclandbank.org/aboutus.html">http://www.sjclandbank.org/aboutus.html</a> <a href="#">Chapter 82.45 RCW</a> <a href="#">Chapter 82.46 RCW</a>  <a href="http://www.sjclandbank.org/ordinance.html">http://www.sjclandbank.org/ordinance.html</a>	<ul style="list-style-type: none"> <li>• The <b>San Juan County Land Bank Tax</b> is a real estate excise tax (REET) authorized by voters and is levied on each sale of real property in the county.</li> <li>• It was renewed in 1999 for 12 years.</li> <li>• The purchaser pays 1% of the selling price.</li> <li>• Funds used exclusively for preserving the natural heritage of the San Juan Islands.</li> <li>• Land Bank Commission recommends to the County Board of Commissioners on acquisitions, negotiates purchases, conducts appraisals, and supervises management of properties, among other duties.</li> <li>• Other sources of funding for the Land Bank Commission come from a conservation futures tax, private donations, grants and interest income.</li> </ul>
Santa Clarita, California	<a href="http://www.santaclaritaopenspace.com/WorkProgram">http://www.santaclaritaopenspace.com/WorkProgram</a> <a href="http://www.santaclaritaopenspace.com/_pdf/2010%20OSPD%20Work%20Program%20-%20Combined.pdf">http://www.santaclaritaopenspace.com/_pdf/2010%20OSPD%20Work%20Program%20-%20Combined.pdf</a>  1. <a href="#">California Streets and Highway Code</a> <b>Division 15.</b> Tree Planting, Landscaping and Lighting <b>Part 2.</b> Landscaping and Lighting Act of 1972 <b>Section 22500 through 22679</b>  2. <a href="#">California Constitution, Article 13D</a>  3. <a href="#">California Government Code</a> <b>Title 5.</b> Local Agencies <b>Division 2.</b> Cities, Counties & Other Agencies <b>Part I.</b> Powers & Duties Common to Cities, Counties, & Other Agencies	<ul style="list-style-type: none"> <li>• <b>Open Space and Parkland Preservation District</b> is a special assessment district voters approved in July 2007.</li> <li>• Its purpose is to expand funding for the existing Open Space, Park and Parkland Program (Program), which is responsible for the acquisition, preservation, improvement, servicing and maintenance of parks, parkland, and open space lands.</li> <li>• Voters approved the creation of the district and in July 2007, Santa Clarita City Council adopted a resolution to formal district.</li> <li>• The funds are administered by the City's Open Space and Real Property Division.</li> <li>• In the first year, a single family residence pays \$25, which is the designated "Assessment Rate." Condominiums, townhomes and apartments pay \$18.75 for each unit, and mobile home parks pay \$12.50 per space. Non-residential property (commercial, industrial and institutional land uses) pay \$75 per acre, and vacant parcels pay \$18.75 per acre up to 5 acres (so not to exceed \$93.75). The maximum Assessment Rate that can be charged increases by \$1 each year. The actual Assessment Rate in any fiscal year must be approved by the City Council prior to the levy and may not exceed the maximum Assessment Rate without receiving property owner approval for the increase.</li> <li>• The assessment is proposed to be in place for 30 years.</li> <li>• Funds go into the program budget.</li> <li>• Open Space Plan establishes acquisition priorities.</li> <li>• Principles: the acquired land is within the benefit area for the District (within a 3-</li> </ul>

Location	Enabling Legislation/Key Plans	Important Elements
	<p><b>Chapter 4.</b> Financial Affairs  <a href="#">Article 4.6. Proposition 218 Omnibus Implementation Act</a></p>	<p>mile radius of the City’s existing parks and open space lands), and at least 90% of the acres purchased will be preserved for natural open space (so that no more than 10% of the acres purchased will be used for future improved active parkland).</p>
Franconia, Pennsylvania	<p>Program summary  <a href="http://www.franconiatownship.org/documents/FrancTalk08FarmInsert.pdf">http://www.franconiatownship.org/documents/FrancTalk08FarmInsert.pdf</a></p> <p>Local Tax Enabling Act (1965)</p> <p>Local Code Book  <a href="http://ecode360.com/?custId=FR0973">http://ecode360.com/?custId=FR0973</a></p> <p><b>Part II.</b> General Legislation  <b>Chapter 127.</b> Taxation  <b>Article V.</b> Earned Income Tax for Acquisition of Open Space, Agricultural Conservation Easements, Etc.</p>	<ul style="list-style-type: none"> <li>Residents pay an <b>Open Space Earned Income Tax</b> (EIT), .25% earned income tax increase.</li> <li>Through the Open Space Program, the Township’s Board of Supervisors uses funds to finance the acquisition of open space, agricultural conservation easements, property development rights and recreational and/or historical lands.</li> <li>Passed by voters in 2001.</li> <li>Open space objectives outlined in the Franconia Township Open Space Plan of 2005 and the Indian Valley Regional Comprehensive Plan.</li> </ul>
Georgia	<p>Program summary  <a href="http://glcp.georgia.gov/00/channel_title/0,2094,82613131_114687036,00.html">http://glcp.georgia.gov/00/channel_title/0,2094,82613131_114687036,00.html</a></p> <p>Rules of Georgia Department of Natural Resources  <a href="#">Chapter 391-1-6. Georgia Conservation Tax Credit Program</a></p>	<ul style="list-style-type: none"> <li>The purpose of the <b>Georgia Conservation Tax Credit Program</b> is to increase the financial incentives for a willing landowner to donate land or place a permanent conservation easement on their property.</li> <li>Taxpayers can claim a credit against their state income tax of up to 25% of the fair market value of the donated property. The credit is limited to \$250,000 for individuals, \$500,000 per corporation, and up to \$1 million (in aggregate) for partnerships. The amount of the credit used in any one year may not exceed the amount of state income tax otherwise due. Any unused portion of the credit may be carried forward for ten succeeding years.</li> <li>The property must be donated to a government entity or to a qualified non-profit organization and must meet the State’s conservation purposes. The Georgia Department of Natural Resources (DNR) is responsible for certifying that donated property meets conservation purposes and that the property is being donated to a qualified organization.</li> </ul>

### III. INCENTIVE PROGRAMS TO ACCEPT GROWTH

Location	Enabling Legislation/Key Plans	Important Elements
Maryland	<p>Program website  <a href="http://www.mdp.state.md.us/OurProducts/pf_amap.shtml">http://www.mdp.state.md.us/OurProducts/pf_amap.shtml</a></p> <p>State Finance and Procurement  <b>Division I.</b> State Finance  <b>Title 5.</b> State Planning  <b>Subtitle 7B.</b> Priority Funding Areas</p> <p><a href="#">Md. STATE FINANCE AND PROCUREMENT Code Ann. § 5-7B-01</a></p>	<ul style="list-style-type: none"> <li>• Since 1992 the State of Maryland has adopted a variety of Smart Growth laws and policies. Many of these laws and policies have been administered by the Maryland Department of Planning, including the <b>1997 Priority Funding Areas (PFAs) Act</b>, which directs state spending to PFAs.</li> <li>• The purpose is to encourage and support growth and development of highways, water, sewer, economic development assistance, and State leases and construction of new office facilities by giving PFAs priority for funding.</li> <li>• Eligible areas include enterprise zones, industrial areas, neighborhood revitalization areas, and heritage areas, as well as specific geographic areas identified by the state. New residential areas are eligible if they will be served by water and sewer systems and meet density standards</li> </ul>
Connecticut	<p>Program website  <a href="http://www.ct.gov/opm/cwp/view.asp?A=2985&amp;Q=413024">http://www.ct.gov/opm/cwp/view.asp?A=2985&amp;Q=413024</a></p> <p><a href="#">PUBLIC ACT 07-4</a>, An Act Implementing the Provisions of the Budget Concerning General Government, Sections 38 to 50 inclusive.</p>	<ul style="list-style-type: none"> <li>• The <b>Housing for Economic Growth Program</b> is administered by the state's Office of Policy and Management (OPM).</li> <li>• It offers incentives for communities to establish Incentive Housing Zones. Zones must comply with minimum allowable density requirements. <ul style="list-style-type: none"> <li>○ Technical Assistance Grants (planning, adoption of regulations and design standards, review and revision) are available for communities with designated zones.</li> <li>○ Zone Adoption Grants (\$2,000 to each municipality that has complied with the requirements of PA 07-4, Sections 38-49 for each unit if housing to be built)</li> <li>○ Building Permit Grants (one-time building permit payment for each building permit issued for each residential housing unit in an approved Housing Incentive Development (\$2,000 for each multi-family housing unit, duplex unit or townhouse unit; \$5,000 for each single family detached unit)</li> </ul> </li> </ul>
Massachusetts	<p>Program website  <a href="http://www.mass.gov/envir/smart_growth_to_olkkit/pages/mod-40R.html">http://www.mass.gov/envir/smart_growth_to_olkkit/pages/mod-40R.html</a></p> <p>40R Statute  <a href="http://www.mass.gov/Ehed/docs/dhcd/cd/ch40r/40rstatute.pdf">http://www.mass.gov/Ehed/docs/dhcd/cd/ch40r/40rstatute.pdf</a></p>	<ul style="list-style-type: none"> <li>• <b>The 'Chapter 40R' Program</b>, administered by the commonwealth's Department of Housing and Community Development (DHCD), promotes the creation of growth incentive zones, or Smart Growth Overlay Districts.</li> <li>• Purpose is to encourage municipalities to establish the overlay districts and promote housing production and smart growth development.</li> <li>• Under the program, overlay districts allow densities of eight unit per acre for single family houses, 12 units per acre for two-three family housing units, and 20 units per acre for multi-family housing units. The zoning must require that 20% of the</li> </ul>

Location	Enabling Legislation/Key Plans	Important Elements
	760 CMR 59.00	<p>housing units within the district are designated as affordable housing. The district may allow mixed-use buildings. The location of these districts must be near a rapid transit, commuter rail station, or an area of concentrated development including a town center.</p> <ul style="list-style-type: none"> <li>• Municipality will receive both incentive and density bonus payments from the State for all housing permitted under the 40R district.</li> <li>• Applications submitted to DHCD have three steps: site analysis and preparation of a Developable Land Plan, preparation of a Smart Growth Residential Density Plan, and preparation of a 40R Smart Growth Overlay District.</li> </ul>
Vermont	<p>Growth Centers Program  <a href="http://www.vpic.info/pubs/implementation/pdfs/9-Growth.pdf">http://www.vpic.info/pubs/implementation/pdfs/9-Growth.pdf</a></p> <p>Vermont Department of Housing and Community Affairs, Downtown Program  <a href="#">24 VSA §4382</a></p>	<ul style="list-style-type: none"> <li>• The <b>Growth Centers Program</b> is a strategy to address the impacts of growth on public investments and the costs of scattered development. Municipalities must apply and meet criteria associated with projections, design, buildout, implementation, etc.</li> <li>• Regulatory incentives to communities: Land Use Panel Review, District Environmental Commission Review, request a master plan review to streamline process.</li> <li>• Financial incentives to communities: Growth centers are eligible to create TIF districts to fund infrastructure improvements; priority is given to growth centers for 1) public facility investments (e.g. wastewater management facilities, technical and financial assistance for brownfield redevelopment, CDBG implementation grants); 2) state economic development assistance; 3) downtown transportation funds and transportation enhancement improvements; and 4) grants for housing renovations and affordable housing construction programs. State officials seeking sites to lease or construct new state buildings are required to consider growth centers.</li> </ul>
Portland, Oregon	<p>Program website  <a href="http://www.oregonmetro.gov/index.cfm/go/by.web/id=277">http://www.oregonmetro.gov/index.cfm/go/by.web/id=277</a></p> <p><a href="#">State Planning Statutes</a>  <a href="#">Chapter 268. Metropolitan Service Districts</a></p> <p>Oregon Administrative Rules  Department of Land Conservation and Development  <a href="#">Division 24. Urban Growth Boundaries</a></p>	<ul style="list-style-type: none"> <li>• METRO is a regional elected council. They adopted an <b>Urban Growth Boundary</b> in 1979 and it includes 400 square miles, including the Portland metro area (three counties, along with 24 cities and more than 60 special service districts).</li> <li>• The primary role of the boundary is to control urban expansion into farm and forest lands.</li> <li>• It is required by state law to have a 20-year supply of land for future residential development inside boundary. Every five years, METRO is required to conduct a review of land supply and expand boundary if necessary.</li> <li>• 2040 Growth Concept is METRO's growth management policy, defines development through 2040 and includes the promotion of regional and city centers along transit corridors.</li> </ul>

Location	Enabling Legislation/Key Plans	Important Elements
Riverside, California	Planning Division <a href="http://www.riversideca.gov/planning/zoning-infill.asp">http://www.riversideca.gov/planning/zoning-infill.asp</a>	<ul style="list-style-type: none"> <li>The purpose of the <b>Residential Infill Incentive Program</b> is to fulfill the policies of the General Plan (similar to the local comprehensive plan), specifically to encourage growth in areas near existing urban areas and discourage development in outlying areas.</li> <li>Infill is defined as: the development, redevelopment or reuse of less than five vacant or underutilized R-1 or RR zoned parcels of 21,780 square feet or less, surrounded by residential uses (80% of land uses within a half mile radius) where the proposed project is consistent with General Plan designations and applicable zoning.</li> <li>Eligible lots by neighborhood are provided.</li> <li>Fees are waived or adjusted (Transportation Fee, Traffic Signal Fee, Grading Permit fee, Water Distribution Fee, and Street Light In-Lieu Fee are waived; reduction in Building Plan Check Fee).</li> </ul>
Sacramento County, California	Program website <a href="http://www.msa2.saccounty.net/FeeDeferral/Pages/default.aspx">http://www.msa2.saccounty.net/FeeDeferral/Pages/default.aspx</a>	<ul style="list-style-type: none"> <li>The <b>Development Fee Deferral Program</b> is administered by the Municipal Services Agency, which allows developers to defer the payment of impact fees to encourage economic development, affordable housing and residential developments.</li> <li>Three program components: affordable housing (also includes waivers), non-residential, and residential development.</li> <li>Developers pay a small portion of development impact fees at the building permit stage and can defer paying remainder of the fees until a later date (deferral period varies). Impact fees include those associated with road, transit, drainage, water supply, library, and park improvements. Deferrable fees also vary by project type (e.g., residential or non-residential).</li> </ul>
Chandler, Arizona	Program website <a href="https://chandleraz.gov/default.aspx?pageid=684">https://chandleraz.gov/default.aspx?pageid=684</a>  <a href="http://www.chandleraz.gov/Content/ChandlerInfillIncentivePlan.pdf">http://www.chandleraz.gov/Content/ChandlerInfillIncentivePlan.pdf</a>  Establishing infill incentive districts <a href="#">Arizona Revised Statutes §9-499.10</a>	<ul style="list-style-type: none"> <li>The <b>Commercial Reinvestment Program</b> was adopted by the City Council in 2001. In 2009, the council adopted the <b>Infill Incentive Plan</b> and established the <b>Infill Incentive District</b>. The Plan expanded the CRP to increase mixed use in commercial centers by incorporating housing and offices. The Commercial Reinvestment Program offers financial incentives in the form of reimbursements for costs of demolition and/or providing public infrastructure necessary to accommodate a new use on the site.</li> <li>Since the Infill District includes older neighborhoods, there is also the <b>Single-Family Infill Program</b>. Incentives include 50% reimbursement of applicable development fees including impact fees and system development fees may be awarded to an Energy Star qualified home; 100% reimbursement of applicable development fees may be awarded to a project that is LEED certified or Energy Star qualified and LEED certifiable.</li> <li>Criteria and requirements are listed in the Infill Incentive Plan.</li> </ul>



Location	Enabling Legislation/Key Plans	Important Elements
		<ul style="list-style-type: none"> <li>• Funding of the program comes from the City budget.</li> <li>• The Economic Development Division administers the Commercial Reinvestment Program and the Planning and Development Department administers the Single-Family Infill Program.</li> </ul>

# Appendix E

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## Draft Enabling Legislation



## **APPENDIX E – DRAFT ENABLING LEGISLATION FOR TRANSFER OF DEVELOPMENT RIGHTS (TDR).**

The following text is provided as a working draft for new state enabling legislation in Rhode Island specifically for Transfer of Development Rights (TDR). In researching other state legislation, Horsley Witten Group (HW) found that most states applied a “minimalist” approach to their TDR legislation. State law routinely provided a *framework* in which local governments could implement the tool, but left the *details* associated with different aspects of the program to the local governing bodies to craft. This approach is particularly important for TDR as the manner in which the program could be applied to Rhode Island communities is extremely diverse. While some communities would choose to protect farms and open space, other communities may choose to trade individual building stories or protect historic structures. The combinations of resource protection priorities and growth incentive bonuses that could be paired in local TDR program are too numerous to count. State legislation that is more “enabling” than “prescriptive” is therefore the preferred approach.

The language provided below would replace the existing §45-24-46.2 and §45-24-46.3 and includes provisions for:

- Basic TDR transactions;
- Definitions for important terms;
- The potential use for “fee-in-lieu” of TDR; and
- The potential for inter-municipal TDR.

### **§ 45-24-46.2 Special provisions – Transfer of development rights**

- (a) In addition to other powers granted to towns and cities by this chapter to establish and administer transfer of development rights programs, a town or city council may provide by ordinance for the transfer of development rights, as a voluntary program available to developers and property owners, in the manner set forth in this section.

*Commentary: Note that TDR is only offered as a voluntary program through this legislation.*

- (b) Terms defined for this chapter.

- (1) “Fee-in-lieu of transfer of development rights” means the payment of money to a dedicated land preservation account in exchange for the ability to develop more intensely in a receiving area pursuant to a transfer of development rights ordinance and any associated regulations.

*Commentary: The framework for fee-in-lieu is provided below in subsection d.*

- (2) “Receiving area” means an area of a municipality that is established as part of a transfer of development rights ordinance for the purposes of increasing the intensity of development on the parcel(s) of land to specified levels that would

otherwise not be allowed. A receiving area may be established as an added component to an existing district or as an overlay district that is superimposed upon one or more existing zoning districts.

- (3) “Sending area” means an area of a municipality that is established as part of a transfer of development rights ordinance for the purposes of preserving valued resources on a parcel(s) of land by transferring development rights associated with those resources to a receiving area. A sending area may be established as an added component to an existing district or as an overlay district that is superimposed upon one or more existing zoning districts.

*Commentary: Note that, for both sending and receiving areas, these can be mapped “as an added component to an existing district”. This allows for municipalities to use zoning districts that are already mapped as a sending or receiving area. For example, a rural residential district area could become a sending area in its entirety. Likewise, the Post Road Corridor in North Kingstown is a receiving area in its entirety.*

- (4) “Valued resource” means any land or structure that is targeted for preservation in the Comprehensive Plan through inclusion in a sending area as part of a transfer of development rights ordinance. These resources may include, but shall not be limited to, scenic landscapes, open space, forest, wildlife habitat, farmland, drinking water protection areas, historic land or structures, or areas with lower levels of infrastructure.

*Commentary: This definition was provided as an important way to encapsulate the wide variety of landscapes, activities or structures that could be preserved through TDR into a single term that will make the legislation easier to read. In rural areas, valued resources might likely be open space and farmland. In urban areas, valued resources may be more focused on parks or historic building sites.*

- (c) The establishment of a voluntary system for transfer of development rights within or between municipalities shall be for the purpose of:

- (1) Providing developers and property owners the ability to establish, certify, purchase, sell, convey, extinguish and/or hold land development rights;
- (2) Limiting or extinguishing development rights on parcels where preservation of land or of existing activities are valued by the municipality as identified in the Comprehensive Plan;
- (3) Directing development away from valued resources to places better suited to increased levels of development such as established or proposed mixed use, commercial, industrial, village, or residential centers;
- (4) Directing development to areas served by existing infrastructure such as established roadways, public water supply systems, centralized sewer collection systems, public transit and other utilities; or
- (5) Shaping and balancing urban and rural development.

- (d) As part of an ordinance for transfer of development rights, a city or town may allow for intensification of development in a receiving area to occur through a fee-in-lieu of the transfer of development rights. Any municipality that provides for a fee-in-lieu of transfer of development rights option shall have identified the targeted valued resource(s) within its Comprehensive Plan as eligible for a fee-in-lieu transaction and shall provide:

*Commentary: Fee-in-lieu of TDR is gaining interest across the country and has been implemented by several local governments. See full Washington County report for a discussion of this approach.*

- (1) A formula and/or procedure by which a fee amount for development rights is determined using acceptable real estate valuation processes and which demonstrates that the fee amount is reasonably related to the monetary value of the valued resource;
- (2) A schedule by which the municipality shall revisit any data collection, analyses or other components of the formula and/or procedure used to determine the fee amount;
- (3) Identification of the approval mechanism required to use the fee-in-lieu option;
- (4) Identification of an account that shall be used to hold the funds and the party that shall administer the account;
- (5) Requirements that the sole purpose of the funds in the account shall be for preservation of those valued resources identified in the sending area;
- (6) Identification of the authority that shall approve use of the funds for purchasing development rights and the process by which those approvals are made.

*Commentary: The six elements above provide the framework within which a fee-in-lieu of TDR program would operate. Importantly, the framework **DOES NOT** prescribe a specific approach to identifying the monetary value of valued resources. Because of the diverse types of landscapes or structures that could be identified, it is essential that state legislation allows calculations to be tailored to specific local programs.*

- (e) As part of an ordinance for transfer of development rights, a municipality may enter into an agreement with another municipality to transfer development rights from one municipality to another. Any transfer of development rights from one municipality to another shall require the following at a minimum:
- (1) Approved language within each municipality's Comprehensive Plan calling for the potential use of inter-municipal transfer of development rights;
  - (2) A zoning ordinance in each municipality allowing for said transfer;
  - (3) The establishment of sending areas and receiving areas in a zoning ordinance as applicable and reflected in each of the municipal Comprehensive Plans;
  - (4) In the municipality that will receive development rights, a development review process that requires at least one public hearing in advance of final approval.

*Commentary: Any community choosing to accept development rights from another community will clearly need an incentive to do so. However, this draft legislation does not presume to know what that incentive will be and how it may be calculated. The recommendation is to have local Planning Board and Council develop a process that meets their needs. This may include fiscal or other impact analyses that demonstrate a net benefit to the receiving community. But, again, this should be decided at the local level.*

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